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- license, part of the
occasional license, s. 27.
G.* Consent of justices to grant occasional
license.
Notice of exemption.
1. Notice of intention to apply for a rem

here deposit

Transferring Licenses.

- K. Precept from justices to the clerk to the justices to issue precepts to the petty constables to give notice of the sessions for transferring licenses.
- L. Precept from the clerk to the justices to the petty constables.
- M. Precept from the petty constables to the magistrates, and persons keeping ale-houses, &c.
- N. Precept for church doors, &c.
- O. Notice to the overseers of the poor, &c., from the person wishing to transfer his license, s. 11.
- O 1. Power of attorney.
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- Q. Transfer license.
- Q 1. Certificate of good behaviour.

Barkerhouse and Grocers' Forms.

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- R 1. Notice of application for a grocer's license.
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- S 1. Certificate granted at special session.
- S 2. Renewal certificate.
- S 3. Grant of a new license without confirmation.
- T. Notice of transfer certificate.
- U. Transfer certificate.

THE
**Intoxicating Liquor Licensing
Acts, 1872, 1874.**

TOGETHER WITH ALL

THE ALEHOUSE, BEERHOUSE, REFRESHMENT HOUSE, WINE AND BEER-
HOUSE, INLAND REVENUE, AND SUNDAY CLOSING ACTS
RELATING THERETO.

WITH INTRODUCTION, NOTES, AND INDEX.

Seventh Edition, Greatly Enlarged.

BY

JAMES PATERSON, Esq., M.A.,

BARRISTER-AT-LAW.

*Editor of "Archbold's Justice of the Peace," "The Fishery Acts,"
"The Game Acts," "The Bastardy Acts," &c.*

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PREFACE TO THE SEVENTH EDITION.

SINCE the publication of the Sixth Edition of this Work the cases on the Licensing Acts have never been so numerous and important as in this short interval of time. The Author has accordingly been induced to extend considerably the notes, and to re-write many of them, in order to include every decision up to the present date, and to make the contents more complete and exhaustive. The cognate subjects of Theatre, Music and Dancing Licenses, Billiard Licenses, and the Rights and Duties of Innkeepers have been greatly expanded, and scarcely any topic which one would expect to be noticed in a Work with this title will be found to be omitted. And to make the Work more practically useful the Index and Table of References have been made more copious in every respect, and the type has at the same time been improved.

The plan of the Work is that which experience, and the recommendations of judges and practitioners attest to be most useful in practice, namely, to give the first place to the two Licensing Acts, 1872 and 1874, as now being the leading Statutes, explained by copious notes and cross-references, and then to arrange by way of Appendix, in chronological order, all the earlier as well as later series of outstanding enactments on licensing matters, each, in the same manner, accompanied with notes and cross-references. By this method, those who

consult the Work have the great advantage of readily seeing the sequence of sections in each statute, and at the same time have the materials for referring to every other enactment modifying them. Besides this list of chronological statutes, there are other enactments more or less referred to in the notes, and of these there is a separate table of sections to be found at the commencement of the Book.

J. P.

GOLDSMITH BUILDING, TEMPLE,
August, 1889.

PREFACE TO THE FIRST EDITION.

THE Licensing Act, 1872, recently passed, and which has made so many important changes in the laws relating to the sale of Intoxicating Liquors, was intended to settle some questions of domestic policy long agitated, confessed to be extremely difficult of treatment, and probably destined after a few years to be again and again made the subject of discussion. It was originally desired by the Government to introduce a consolidation of the multifarious laws on the subject; but practical difficulties prevented the realisation of so desirable an object, and the present Act thus adds one to a group of somewhat incongruous Statutes, and increases the difficulty of its own interpretation.

The Editor, after much consideration, has embodied his views of the leading difficulties that will arise under the new Act, and has suggested some solution of most of them. This Edition also contains a complete collection of the existing statutory law on the subject.

J. P.

GOLDSMITH BUILDING, TEMPLE,
22nd August, 1872.

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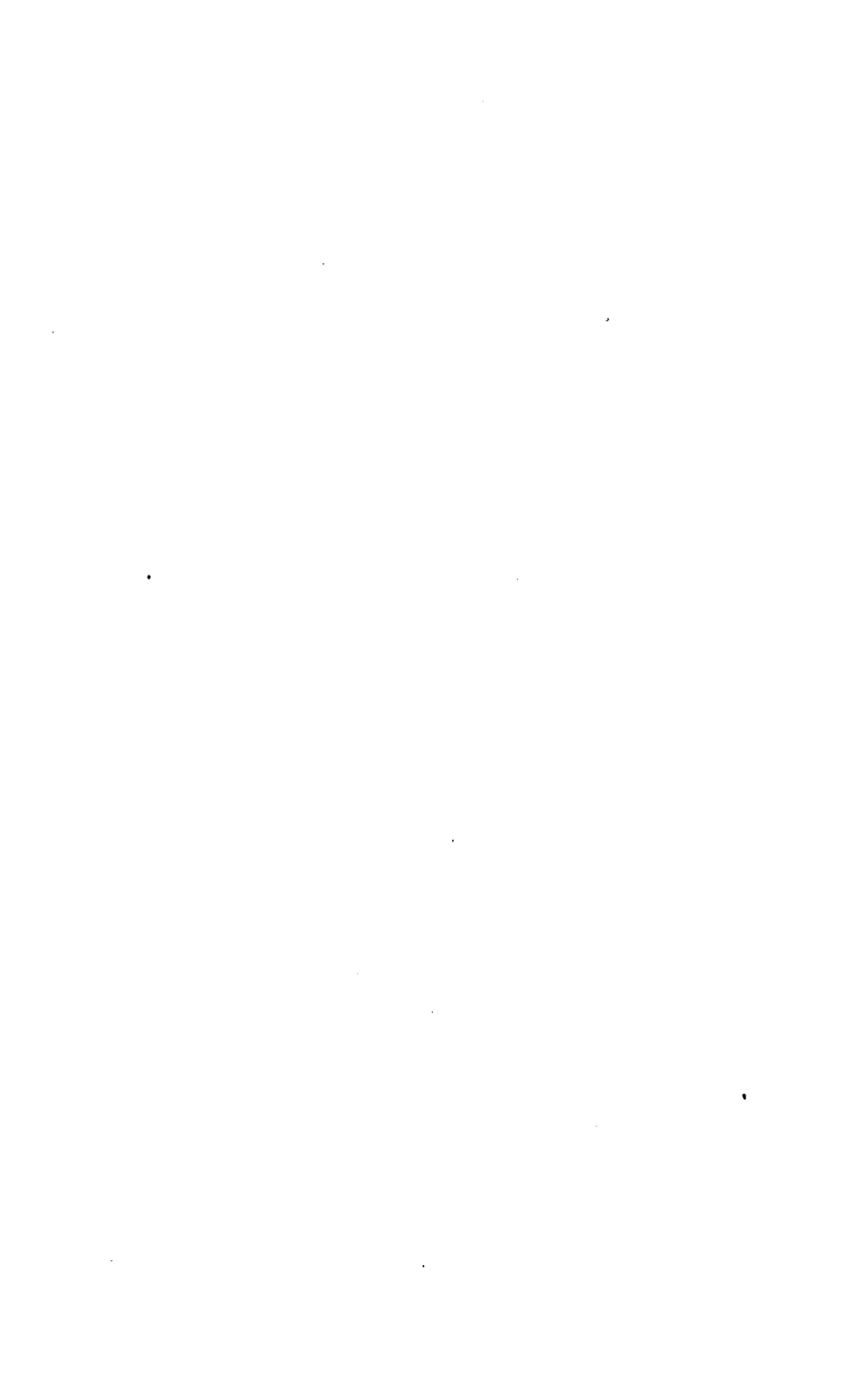
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INTRODUCTION.

THE sale of Intoxicating Liquors by retail is now dealt with mostly in five separate statutes, or groups of statutes.

The Alehouse Act, 9 Geo. 4, c. 61, now called the Intoxicating Liquor Licensing Act, 1828, amended by 5 & 6 Vict. c. 44, and qualified by provisions in the Municipal Corporations Act, 1882 dealt with the houses known as inns or victualling-houses where intoxicating liquors are consumed on the premises, the leading feature of which was, that before intoxicating liquors could be sold in such houses, a license from the justices at the general annual licensing meeting or the adjournment was necessary. And there were numerous miscellaneous offences arising out of the conduct of such houses. The first of these statutes is still the root of the jurisdiction of licensing justices.

The Beerhouse Acts, 1 Will. 4, c. 64 ; 4 & 5 Will. 4, c. 85 ; 3 & 4 Vict. c. 61 ; 33 & 34 Vict. c. 14 ; 43 Vict. c. 6, and 45 & 46 Vict. c. 34, dealt with the houses or rather shops for the sale of beer and cider by retail both for consumption on the premises and off the premises, and at first such houses were allowed to be opened and carried on without requiring any guarantee of character, though after a few years a certificate of good character, signed by a few neighbours, and of a very imperfect nature, was

required as a basis for the excise license. A rating qualification was next added. But up to 1869 no justices' license or certificate was required, and thus an important guarantee of character had been omitted, which was then supplied.

The Wine and Refreshment Houses Act, 23 Vict. c. 27, amended and added to by Inland Revenue Acts, 24 & 25 Vict. c. 21; 24 & 25 Vict. c. 91; 25 & 26 Vict. c. 22; 25 & 26 Vict. c. 38; 26 & 27 Vict. c. 33; 27 & 28 Vict. c. 18; 43 & 44 Vict. c. 20, followed the analogy of the Beerhouse Acts, and not of the Alehouse Acts.

At last the Wine and Beerhouse Acts, 1869, 1870, 32 & 33 Vict. c. 27; 33 & 34 Vict. c. 29, were passed, with a view to supplement the conspicuous deficiency of the Acts as to beerhouses, wine and refreshment houses, by requiring thereafter a certificate from justices for the sale of all intoxicating liquors by retail, and which certificate was tantamount to the alehouse license granted by justices, though not identical in all respects. One or two other retail licenses not included in the Beerhouse or Wine Licenses Acts were also included in the Wine and Beerhouse Act of 1869, and treated in the same manner—so far, at least, as to require in all the cases a justices' certificate as a preliminary condition.

It may be also added that, in addition to the four groups of statutes already mentioned, there was a separate group which dealt with the closing of all such houses on *Sundays* and to some extent also on week-days during the night. These Acts at first applied to all licensed houses, but now are confined to refreshment houses which do not supply intoxicating liquors.

The Licensing Act of 1872, while repealing entirely the Sunday Acts, as regards all houses licensed to sell liquor, though not as regards refreshment houses where no intoxicating liquor is sold,

and substituting new provisions as to Sunday, Christmas Day, and Good Friday, left a considerable portion of all the other Acts untouched. It introduced more uniformity into the management of houses, by requiring a justices' license or certificate (these being now practically convertible terms) substantially in all cases where intoxicating liquor is sold by retail. Numerous miscellaneous offences connected with such management were singled out for separate treatment, and the punishment generally was increased. In an Act of that kind, however, which was not a consolidating Act, but was designed merely to supplement the more important deficiencies of former Acts, the process of recasting and moulding anew the enactments had been attended with some losses and anomalies which were almost inevitable, and these were further increased by the necessity of references and cross-references between so many statutes, from each of which the others borrowed something.

The Licensing Act, 1874, did not attempt to disturb the settlement contained in the Act of 1872, but merely corrected one or two anomalies which had attracted prominent notice, and added a few minor details supplementary to those in the prior Act.

The leading provisions of the outstanding enactments as to the grant of licenses and certificates may be classed under the following heads, and will be found noticed in greater detail under the following references :—

Publicans' licenses (new or old). Discretion unlimited.

9 Geo. 4, c. 61, s. 1.

„ transfer. Discretion unlimited.

9 Geo. 4, c. 61, s. 14.

„ renewal. Discretion unlimited.

9 Geo. 4, c. 61, s. 1.

Licensing Act, 1872, s. 42.

Beer license, new (off and on). Discretion unlimited.

9 Geo. 4, c. 61.

32 & 33 Vict. c. 27, s. 8.

33 & 34 Vict. c. 29, s. 5.

43 Vict. c. 6.

45 & 46 Vict. c. 34.

„ renewal (off and on). Discretion unlimited.

„ transfer (off and on). Discretion unlimited.

„ since 1869 (on). Discretion limited.

32 & 33 Vict. c. 27, s. 19.

„ renewal and transfer (on). Discretion limited.

Cider license, new (on) license. Discretion unlimited.

32 & 33 Vict. c. 27, s. 8.

„ renewal and transfer (on). Discretion unlimited.

„ new (off). Discretion limited.

32 & 33 Vict. c. 27, s. 8.

„ renewal and transfer (off) license. Discretion limited.

Wine license, new (on) license. Discretion unlimited.

32 & 33 Vict. c. 27, s. 8.

„ renewal and transfer (on). Discretion unlimited.

„ new (off) license. Discretion limited.

32 & 33 Vict. c. 27, s. 8.

„ renewal and transfer (off). Discretion limited.

Spirits and liqueurs, new (off) license. Discretion limited.

Licensing Act, 1872, section 69.

32 & 33 Vict. c. 27, s. 8.

„ renewal and transfer (off). Discretion limited.

Licensing Act, 1872, section 69.

32 & 33 Vict. c. 27, s. 8.

33 & 34 Vict. c. 29, s. 4.

Sweets, new (off) license. Discretion limited.

Licensing Act, 1872, section 74.

32 & 33 Vict. c. 27, s. 8.

„ renewal and transfer (off). Discretion limited.

„ new (on) license. Discretion unlimited.

Licensing Act, 1872, section 74.

23 Vict. c. 27, s. 7.

32 & 33 Vict. c. 27, s. 8.

Sweets, renewal and transfer (on). Discretion unlimited.

Valuation qualification—publicans' licenses since 1872.

Licensing Act, 1872, section 45.

" since 1872 (on) beer, cider, wine, sweets.
Licensing Act, 1872, sections 45, 47.

" if before 1872, beer and cider (on).
3 & 4 Vict. c. 61.
33 & 34 Vict. c. 29, s. 10.
Licensing Act, 1872, sections 46, 47.

" if before 1872, wine and sweets (on).
23 Vict. c. 27, s. 8.
Licensing Act, 1872, sections 46, 47.

" beer and cider (off).
3 & 4 Vict. c. 61, s. 1.
Licensing Act, 1872, sections 46, 47.

General annual licensing meeting for *all new and renewal* licenses,
time of holding.

32 & 33 Vict. c. 27, s. 8.

9 Geo. 4, c. 61.

33 & 34 Vict. c. 29, s. 4.

Transfer sessions, when held and cases entertained.

9 Geo. 4, c. 61, ss. 4, 14.

33 & 34 Vict. c. 29, s. 4.

Licensing Act, 1874, section 15.

Petty sessions, temporary license between transfer sessions.

5 & 6 Vict. c. 44.

Notices by applicants for new license.

Licensing Act, 1872, section 40.

32 & 33 Vict. c. 27, s. 7.

" for transfer.
Licensing Act, 1872, section 40.

No notices for renewal licenses.

Confirmation of all new licenses.

Licensing Act, 1872, sections 38, 39, 43.

Licensing Act, 1874, section 24.

No confirmation for new (off) licenses.

Licensing Act, 1874, section 24.

Provisional grants.

Licensing Act, 1872, section 50, Act 1874, s. 22.

Removal grants.

Licensing Act, 1872, section 50, Act 1874, s. 22.

Six-day licenses.

Licensing Act, 1872, section 49.

Early closing licenses.

Licensing Act, 1874, section 7.

Excise temporary license.

Licensing Act, 1872, section 53.

Exemption orders.

Licensing Act, 1872, sections 26, 29.

Occasional licenses for other places.

24 & 25 Vict. c. 22, s. 13.

26 & 27 Vict. c. 33, s. 20.

27 & 28 Vict. c. 18, s. 5.

” licenses for fairs and races.

25 & 26 Vict. c. 22, s. 13.

26 & 27 Vict. c. 33, ss. 19, 21.

27 & 28 Vict. c. 18, s. 5.

Licensing Act, 1874, sections 19, 20.

No appeal to quarter sessions against refusal of new licenses.

35 & 36 Vict. c. 94, see Schedule.

37 & 38 Vict. c. 49, s. 27.

Appeal as to all renewals and transfers of licenses and certificates.

9 Geo. 4, c. 61, s. 27.

32 & 33 Vict. c. 27, s. 8.

33 & 34 Vict. c. 29, s. 4.

Closing on Sundays, Christmas Day, and Good Friday.

37 & 38 Vict. c. 49, ss. 3, 9.

44 & 45 Vict. c. 61 (Welsh).

27 & 28 Vict. c. 64 (Refreshment Houses).

The various particulars relating to other details will be found in the Index under their appropriate heads..

THE LICENSING ACTS.

INTOXICATING LIQUOR LICENSING ACT, 1872.

35 & 36 VICT. CAP. 94.

*AN ACT for Regulating the Sale of Intoxicating
Liquors.* [10th August, 1872.]

WHEREAS it is expedient to amend the law for the sale by retail of intoxicating liquors, and the regulation of public-houses and other places in which intoxicating liquors are sold, and to make further provision in respect of the grant of new licenses for the sale of intoxicating liquors, and the better prevention of drunkenness.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:—

Preliminary.

1. Short title.] This Act may be cited as “The Sect. 1.
Licensing Act, 1872.”

2. Extent of Act.] This Act shall not extend to Scotland.

Sect. 3. **3.** *Prohibition of sale of intoxicating without license.*] No person shall sell or expose for sale by retail any intoxicating liquor without being duly licensed to sell the same, or at any place where he is not authorised by his license to sell the same. Any person selling or exposing for sale by retail any intoxicating liquor which he is not licensed to sell by law, or selling or exposing for sale any intoxicating liquor at any place where he is not authorised by his license to sell the same, shall be subject to the following penalties that is to say,—

- (1) For the first offence he shall be liable to a penalty not exceeding fifty pounds, or to imprisonment with or without hard labour for a term not exceeding one month :
- (2) For the second offence he shall be liable to a penalty not exceeding one hundred pounds, or to imprisonment with or without hard labour for a term not exceeding three months, and may, by order of the court by which he is tried, be disqualified for any term not exceeding five years from holding any license for the sale of intoxicating liquors :
- (3) For the third and any subsequent offence he shall be liable to a penalty not exceeding two hundred pounds, or to imprisonment without hard labour for any term not exceeding six months, and may, by order of the court by which he is tried be disqualified for any term not exceeding ten years or for ever from holding any license for the sale of intoxicating liquors :

In addition to any other penalty imposed by this Sect. 3. section any person convicted of a second or any subsequent offence under this section shall, if he be the holder of a license, forfeit such license, and in the case of a conviction of any offence under this section, the court may, if it think expedient so to do, declare all intoxicating liquor found in the possession of any such person as last aforesaid, and the vessels containing such liquor, to be forfeited.

No penalty shall be incurred under this section by the heirs, executors, administrators, or assigns of any licensed person who *dies* before the expiration of his license, or by the trustee of any licensed person who is adjudged a *bankrupt*, or whose affairs are liquidated by arrangement before the expiration of his license in respect of the sale or exposure for sale of any intoxicating liquor, so that such sale or exposure for sale be made on the premises specified in such license, and take place prior to the special sessions then next ensuing, or (if such special session be holden within fourteen days next after the death of the said person or the appointment of a trustee in the case of his bankruptcy, or the liquidation of his affairs by arrangement) take place prior to the special session holden next after such special session as last aforesaid.

Selling liquors without a license.] This section applies to all public-houses, alehouses, houses included in the Wine and Beerhouse Acts, and all those requiring a justices' license. In some cases grocers or wine merchants holding a wine dealer's license may sell wine by retail, not to be consumed on the premises, under an additional retail license, though having no justices' license, being exempted under section 73: *Palmer v. Thatcher*, 3 Q. B. D. 46; 47 L. J. M. C. 54; 37 L. T. 784; 42 J. P. 213. So as to spirit dealers in some cases, see notes to

Sect. 3.*Clubs Supplying Liquors.***NOTE.**

section 73, *post*. As to the evidence of sale, see section occasional licenses, see section 29, *post*.

A dealer in liquors not by retail requires no justices' licence only an excise license; and there may be a difficulty in determining whether a licensed dealer in wines and spirits who has a licence for one town requires a license also for the place where he takes orders: *Stallard v. Marks*, 3 Q. B. D. 412; 42 Q. B. D. 47 L. J. M. C. 91; 38 L. T. 566; 26 W. R. 694. The question is, to be, that if the dealer keeps premises and stores elsewhere and has an agent to take orders, he requires to be licensed there; but if an agent elsewhere is not provided with premises and takes orders at his own office, then the dealer need not have a licence at the agent's address: *Stuckberry v. Spencer*, 51 J. P. 181 M. C. 141.

As to alehouses, the offence of selling without a licence was dealt with by 9 Geo. 4, c. 61, s. 18. Under that section it was put on "selling, bartering, exchanging, or for valuable consideration otherwise disposing of the liquor, or permitting things to be done. Here the offence is "selling or exchanging" only, and these words are not so extensive as those in 9 Geo. 4, c. 61, s. 18, which section is now repealed. "Bartering or exchanging" will now be treated as in the nature of a sale under section 62, *post*, and so equally within this penal provision under this section is much more severe than under 9 Geo. 4, c. 61, s. 18.

Clubs supplying liquors.] The sale here meant is a sale as takes place between buyer and seller in ordinary sale where there is a club or association of persons, such as a sportsmen's club, who buy liquor for the whole body, and then divide it among the members according to rules and bye-laws. If, on the other hand, this is not a sale: *Graff v. Evans*, 8 Q. B. D. 373 262; 51 L. J. M. C. 25; 46 L. T. (N.S.) 347. And for the same reason, if a limited company keep a club, and the directors buy liquor and direct the manager or servant to distribute it among the members according to a fixed tariff, what he does is within the meaning of this section: *Newell v. Hemingway*, 52 J. P. 134; 58 L. J. M. C. 314; 60 L. T. 544. If the club is not a company, the person selling or distributing the liquor may be liable to the penalty: *Evans v. Hemingway*, 52 J. P. 134. When a club is managed by a committee who give express instructions to the manager not to sell liquors to non-subscribers, and the committee members will not be liable, though the manager is: *Newman v. Jones*, 17 Q. B. D. 132; 50 J. P. 373; 55 L. J. M. C. 113; 55 L. T. 327. As to proprietary clubs the rule

Void Licenses.

Sect. 3.

NOTE.

different, and the proprietor or any servant actually managing the pub would be deemed the person selling his own liquors without license.

Selling under a void license.] A distinction is drawn between a license which purports on the face of it to be regular, and one which is intrinsically void. Thus, where a justice of the petty sessional division only was authorised to grant an occasional license under 25 & 26 Vict. c. 22, s. 13, to sell at other places than the inn, and a justice not of the proper division granted it, the holder was held not liable for selling without a license: *Stevens v. Empson*, 1 Ex. D. 100; 40 J. P. 484; 45 L. J. M. C. 63; 33 T. 821. So an excise license granted without the overseers' certificate, contrary to 3 & 4 Vict. c. 61, s. 2, was held not void, though it would have been, if the holder was not the real resident holder and occupier: *Thompson v. Harvey*, 4 H. & N. 254; 28 L. J. M. C. 163; 23 J. P. 150. And where a license was produced, but one of the signatures of the justices was suggested to be forged, though not by the license holder, the justices rightly refused to admit evidence of forgery, and held the license valid: *v. Minshul*, 1 N. & M. 278.

On the other hand, some licenses, though on the face of them regular, are treated as utterly void. Thus, a license granted to a person who had been previously convicted of felony, though none but himself was aware of the felony, and a formal transfer had been subsequently obtained regularly by a third party, was held void in the hands of such third party: *Vine v. Leeds, R. v. Vine*, 1 R. 10 Q. B. 195; 39 J. P. 213; 44 L. J. M. C. 60; 31 L. T. 842; 3 W. R. 649. So if a license is forfeited on conviction for using licensed premises as a brothel, it is void from that moment for all purposes: *R. v. West Riding JJ.*, 52 J. P. 455; 21 Q. B. D. 258; 7 L. J. M. C. 103; 36 W. R. 258. So a license to a dead man would be void, and the executors would get into difficulties by brewing in a dead man's name: *Cowles v. Gale*, L. R. 7 Ch. 12; 1 L. J. Ch. 14; 25 L. T. 524; 20 W. R. 70. So a license granted by justices not at the general annual meeting, or an adjournment, would be void: 9 Geo. 4, c. 61, s. 13. And before that Act a license granted by justices, sitting in private instead of in public, was void: *R. v. Downs*, 3 T. R. 569. Where the parties, the justices, and the excise, all acted on the notion that an enactment was unrepealed, and a license was granted, the court held it void, notwithstanding the mistake: *Pearson v. Broadbent*, 36 J. P. 485. So a beer and wine license obtained by forgery would be void 32 & 33 Vict. c. 27, s. 11), and licenses granted to persons who are declared to be disqualified (9 Geo. 4, c. 61, s. 16; 1 Will. 4, c. 64, s. 2; 35 & 36 Vict. c. 94, s. 30).

Sect. 3.*Alteration of Premises.*

NOTE. An agreement of a licensed person to sublet a room to an unlicensed person to sell liquors therein, contrary to 9 Geo. 4. c. 61, is contrary to public policy, and void: *Ritchie v. Smith*, 6 C. B. 462; 12 J. P. 822; 18 L. J. C. P. 9.

Selling in premises which have been enlarged.] The case also sometimes arises where during the licensing year the license holder has rebuilt his premises on a larger site, or annexed adjoining premises. In such a case the High Court seldom interferes with the discretion of justices, and considers that it is for justices on the occasion of a renewal, or of a prosecution under this section, to determine whether the altered or enlarged premises are substantially the same as the original premises, and whichever way the justices determine, the High Court declines to interfere, even though the premises have been doubled in size: *R. v. Smith*, 31 J. P. 259; 15 L. T. 178; *R. v. Hampshire, Ballam v. Wiltshire*, 44 J. P. 72; *R. v. Raffles*, 1 Q. B. D. 207; 40 J. P. 68; 45 L. J. M. C. 61; 34 L. T. 180; 24 W. R. 536. A license holder, like other traders, may enlarge and improve his premises at his own discretion, subject to the risk of the justices treating the alterations as substantial when a renewal is applied for: *R. v. Sykes or Stringer v. Huddersfield*, 1 Q. B. D. 52; 40 J. P. 22; 45 L. J. M. C. 39; 33 L. T. 568. And the High Court has refused to interfere even where he was convicted of selling in the annexed premises, as being a selling there without a license: *Mahon v. Gaskell*, 42 J. P. 583. See further, section 74 and notes, *post*.

Hawking and selling spirits.] If any person hawks, sells, or exposes to sale any spirits otherwise than on premises for which he is licensed to sell spirits, he shall incur a fine of 100l., and the spirits shall be forfeited. In default of payment of the fine on summary conviction, the offender shall be imprisoned with or without hard labour. Any person may arrest a person found committing an offence against such section: 43 & 44 Vict. c. 24, s. 146. And a like penalty is incurred for knowingly selling or delivering spirits to the end that they may be unlawfully retailed or consumed: *Ibid.* s. 147. And the same penalty is incurred if any person receives, buys, or procures any spirits from a person not having authority to sell or deliver the same: *Ibid.* s. 148.

The punishment.] The forfeiture of the license on a second or subsequent offence is not a matter of discretion in the justices. On the third offence, as the term of imprisonment exceeds three months, the defendant may demand a trial by jury under the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 17. The

*Punishment for Unlicensed Selling.***Sect. 3.****NOTE.**

previous conviction may be proved by a certified extract from the register kept by the clerk of the convicting court : 42 & 43 Vict. c. 49, s. 22. See notes to section 51, *post*.

The forfeiture of liquor and of the vessels is discretionary in the justices on any conviction under this section. Before, however, the liquor found in possession can be forfeited, it seems an opportunity must be given to the person convicted to show cause, for there may be good reason for the liquor not being forfeited as being unjust to third parties : *Gill v. Bright*, 41 L. J. M. C. 22 ; 25 L. T. (N.S.) 591 ; 20 W. R. 248 ; 36 J. P. 168. And for a like reason the justices may well refuse to decide anything as to this matter of forfeiture.

The disqualification of the convicted person on a *second* or subsequent offence must be ordered by the court which adjudicates on the offence, and at the time the penalty or imprisonment is awarded, and is discretionary in the court. A second offence means a second under the Licensing Acts, and hence the justices were held to act without jurisdiction who treated one offence against this section, coupled with another prior offence against the excise enactment in 4 & 5 Will. 4, c. 85, s. 17, as a second offence : *Re Authers*, 53 J. P. 116 ; 22 Q. B. D. 355 ; 58 L. J. M. C. 62 ; 37 W. R. 320.

Notice of the forfeiture and disqualification must be sent by the clerk of the court to the licensing officer of the district, and to the clerk of the justices (if a different person), along with the forfeited license : see section 55, *post*.

The imprisonment authorised by this section as the alternative punishment does not mean an imprisonment in default of payment of any penalty imposed, for if a penalty be imposed there must be in the conviction the usual clause of distress before the imprisonment can be directed : *Re Clew*, 8 Q. B. D. 54 ; 51 L. J. M. C. 140 ; 46 J. P. 534 ; 46 L. T. (N.S.) 482 ; 30 W. R. 704. And the procedure mentioned in section 51 of this Act before it was repealed did not apply to imprisonment when made the alternative punishment for this offence : *Re Brown, R. v. Newcastle JJ.*, 3 Q. B. D. 545 ; 42 J. P. 598 ; 47 L. J. M. C. 108 ; 38 L. T. 682 ; 26 W. R. 757. The defendant may appeal to quarter sessions against the imprisonment under section 52, *post*.

The mode of enforcing the penalty hereby imposed is set forth in 11 & 12 Vict. c. 43, s. 19, supplemented by 42 & 43 Vict. c. 49, s. 21, namely, by distress, and if it appear that there are no goods or insufficient goods, or it would be injurious to distrain, then, instead of issuing warrant of distress, by commitment to prison without hard labour according to the scale of term set forth in 42 & 43 Vict. c. 49, s. 5, the maximum term being three months. See Act 1872, s. 51, *post*.

Sect. 3.

Selling without Excise License.

NOTE.

Selling by retail.] The Alehouse Act, 9 Geo. 4, c. 61, did not define what is meant by selling by retail, and this Act gives no definition of that expression beyond what is contained in section 74, *post*, and which in effect says that that expression shall have the meaning which any of the Liquor Acts has assigned to it in reference to the particular kind of liquor. That section seems to extend to alehouses the definition contained in 4 & 5 Will. 4, c. 85, s. 19, *post*, and confined formerly to beerhouses, and therefore whenever beer, cider, or perry is sold in a less quantity than four-and-a-half gallons it will be a selling by retail. As regards spirits, the sale of spirits in any quantity less than two gallons, or one dozen reputed quart bottles shall be deemed sale by retail: 43 & 44 Vict. c. 24, ss. 102, 104. A selling of foreign wines in less quantity than two gallons or in less than one dozen reputed quart bottles at one time, shall be deemed to be a selling by retail: 23 Vict. c. 27, s. 4. And so is a selling of sweets in those quantities: 26 & 27 Vict. c. 33, s. 18. These quantities will apply to public-house keepers when selling the same liquors. Sweets are also said to be sold wholesale if sold above two gallons or one dozen quarts: 11 & 12 Vict. c. 121, s. 9; 23 & 24 Vict. c. 113, s. 7. Sweets or made wines mean any liquor made by fermentation from fruit and sugar, or from fruit or sugar mixed with any other material: 23 & 24 Vict. c. 113, s. 21. And sweets include made wines, mead and metheglin: 33 & 34 Vict. c. 29, s. 3; 43 & 44 Vict. c. 20, s. 40. Moreover, all persons making entry at the excise office as alehouse keepers, victuallers, or retailers, are deemed sellers by retail of such liquors to all intents and purposes: 35 Geo. 3, c. 113, s. 9.

Selling without excise license.] As to beerhouses not holding excise licenses the former enactments on this subject were 1 Will. 4, c. 64, s. 7; 4 & 5 Will. 4, c. 85, s. 17, and as to wine-houses the enactment was 23 Vict. c. 27, s. 19, neither of which is repealed expressly. Those enactments will still apply to the houses which have no excise license, while the present enactment will apply to such houses for which no justices' certificate has been obtained; but these, of necessity, must, under 32 & 33 Vict. c. 27, s. 4, be now always found co-existing. The penalties in those sections are thus concurrent, and do not interfere with this third section of the Licensing Act, 1872, or with the 5th and 6th sections, subject to this, that a person cannot (by section 59) be punished under both Acts. And the appeal to quarter sessions against a conviction for selling without an excise license is now held to be regulated by the Summary Jurisdiction Acts like ordinary appeals under this Act: *R. v. Glamorganshire*, 53 J. P. 294; 22 Q. B. D. 628; 58 L. J. M. C. 93.

*Death, &c., of License Holder.***Sect. 3.****NOTE.**

if the justices' license is void under any provision of this excise license becomes void also. See section 63, *post*.
and spirits are on the same footing as wine: Licensing Act, sections 69, 74.

tent of third section.] This section seems to apply to who sell anywhere by retail (that is, in the small quantity above referred to), any kind of intoxicating liquor without a license or certificate for that liquor, or who, though licensed, sell liquor not covered by their license, and for which the owner has not obtained a special or temporary license: Licensing Act, 1874, s. 17. There is often a difficulty in deciding whether an offence comes within the 3rd or 5th or 6th sections. See notes to those sections.

ling by executor or trustee of licensed person.] The first paragraph in this section is a re-enactment of the 3rd paragraph of 9 Geo. 4, c. 61, s. 18, now repealed, but is not identical in language. Nor is it identical with the similar enactment as to beer licenses in 23 Vict. c. 27, s. 12, and beer licenses in 3 & 4 Vict. c. 61, s. 8, which were excise licenses only. This enactment applies to certificates for all the houses included in the Wine and Beerhouse Acts, and the sale of spirits and liquors by retail from premises, also the sale of sweets as well as house licenses, and provides for the temporary interval in death or bankruptcy of the licensed person, and the appointment of the personal representative or trustee to the next special sessions under 9 Geo. 4, c. 61, s. 14. But the exemption from the penalty is confined under this section to the case of death and bankruptcy of the licensed person during the currency of his license or certificate. The exemption will not operate after the next special sessions or the next after, though it may not be necessary to obtain during that interval any license or certificate at petty sessions. As to all the other causes of forfeiture mentioned in 9 Geo. 4, c. 61, s. 14, it will be necessary to obtain a license or certificate at petty sessions, until the next special sessions, or to exempt the transferee or succeeding occupier from the penalty: 5 & 6 Vict. c. 44, s. 1. By the 3 & 4 Vict. c. 61, s. 8, and 23 Vict. c. 27, s. 12, the executor is entitled to enjoy the excise license for the rest of the yearly term without further payment. It must be taken not to renew a license in the name of a deceased person: *Cowles v. Gales*, L. R. 7 Ch. 12; 41 L. J. Ch. 14; 25 W. R. 524; 20 W. R. 70.

where a licensee became bankrupt, and by the covenant of his lease was bound on its determination to assign the license to the assignee, it was held that the license was not "property" of the licensee and did not pass to the trustee, but ought to be assigned to the lessor: *Re Britnor*, 46 L. J. Bk. 85; 25 W. R. 560.

Sect. 4.

4. Occupier of unlicensed premises liable for sale of liquor.] The occupier of any unlicensed premises on which any intoxicating liquor is sold, or if such premises are occupied by more than one person, every occupier thereof, shall, if it be proved that he was privy or consenting to the sale, be subject to the penalties imposed upon persons for the sale of intoxicating liquors without license.

This section deals separately with all occupiers of houses not licensed, in which liquors are sold by third parties without license, if such occupiers are aware of the fact. The previous section includes occupiers who sell without a license as well as non-occupiers; but there may be a few cases where the occupier is not the person who sells, though he allows another to sell, or consents to his selling, in which event both are to be punished alike.

This section supersedes what was provided for in the repealed 18th section of 9 Geo. 4, c. 61, as to persons permitting unlicensed selling, and it was held that any agreement of a licensed person to allow an unlicensed person to sell in part of his premises, was contrary to public policy and void: *Ritchie v. Smith*, 6 C. B. 462; 12 J. P. 822; 18 L. J. C. P. 9. The Excise Act, 35 Geo. 3, c. 113, s. 1, which also prohibits persons permitting unlicensed selling in one's house, outhouse, yard, garden, orchard, or other place, under a penalty of 20*l.* seems still in force.

5. Seller liable for drinking on premises contrary to license.] If any purchaser of any intoxicating liquor from a person who is not licensed to sell the same to be drunk on the premises drinks such liquor on the premises where the same is sold, or on any highway adjoining or near such premises, the seller of such liquor shall, if it shall appear that such drinking was with his privity or consent, be subject to the following penalties (that is to say):—

For the first offence he shall be liable to a penalty not exceeding ten pounds;

Sect. 5.

For the second and any subsequent offence he shall be liable to a penalty not exceeding twenty pounds.

For the purposes of this section the expression "premises where the same is sold" shall include any premises adjoining or near the premises where the liquor is sold, ~~if~~ belonging to the seller of the liquor or under his control, or used by his permission.

[Any conviction for an offence under this section shall be recorded on the license of the person convicted.]

This section and the next are enactments superseding corresponding sections in previous Acts, 4 & 5 Will. 4, c. 85, s. 4; 32 & 33 Vict. c. 27, s. 14; 33 & 34 Vict. c. 29, s. 6, and much difficulty has hitherto been felt in meeting the offences aimed at, as was seen in *Cross v. Watts*, 13 C. B. (N.S.) 239; 27 J. P. 18; 32 L. J. M. C. 73; 7 L. T. 463; 11 W. R. 210; *Deal v. Schofield*, L. R. 3 Q. B. 8; 32 J. P. 181; 37 L. J. M. C. 15; 17 L. T. 143; 16 W. R. 77; 8 B. & S. 760. The word "not" in the second line was probably intended to be put before "to be drunk" in that line. A person "not licensed to sell liquor to be drunk on the premises" may mean either a person who has no license at all of any kind, or one who has a license to sell liquor, but only "liquor not to be drunk on the premises." The enactment seems to have been intended to meet this latter case only, and hence the word "not" is misplaced.

The present section is confined entirely to the circumstances described in the first four lines, which collectively constitute a condition precedent to the offence. (1) The premises on which the liquor is drunk must be premises on which the person selling has no license to sell the same in order to be drunk on such premises; (2) The sale must be on such premises; and (3) The liquor must also be drunk on the premises, or on a highway near such premises, or in a third party's premises adjoining or near, it under the seller's control. These conditions existing, the seller of such liquor is to be liable to penalties, but only if he was privy or consenting to such drinking. If the liquor is taken to neighbouring premises (not being the seller's) a few yards distant and drunk on such premises and partly on the highway, this cannot be treated as an offence with the seller's privy: *Bath v. White*, 3 C. P. D. 175; 42 J. P. 375; 26 W. R. 617.

LICENSING ACT, 1872, s. 5.

Act. 5. The consent or *privity* must refer to some premises as the seller's consent would be matter of legal right, for not be said to consent to something he cannot prevent or Hence, if, for example, the field of a third person adjacent to a house, and if the seller has no interest in it, and the person gets into the field and there drinks the liquor, it will be to hold that he did so with the privity or consent or permission of the seller, since the seller will not be able either to give away the permission to go into another's field. Such a case seems not covered by this section. If the last paragraph of section 6 had been applicable to the 5th section, this difficulty would have been met.

NOTE.

Another difficulty may arise when the man who purchases liquor does not drink it himself, but hands it over to a person, who drinks it on the premises or near them; the penalty seems not to apply in such a case. The justices may, however, in such a case, hold that the real purchaser was the one who drank the liquor, and the other, or nominal purchaser, was merely an agent, if the facts warrant the inference; for, under section 5, the consumer is *prima facie* a purchaser. And this view has been acted on as to an offence under section 13, *post*: *Scatchard v. Johnson*, 52 J. P. 389; 57 L. J. M. C. 41. And the seller may be liable under the 3rd section.

This penalty seems to be cumulative to that mentioned in the 3rd section, unless the construction above suggested is adopted, viz., that it applies only to persons having a license of some kind; for otherwise it would be somewhat singular that a person who sells liquor on premises without a license will be liable on proof of those facts alone to the heavy penalties of the 3rd section, and yet, if the same person, in addition to the above facts, lets the purchaser drink the liquor on the premises, he would only be liable to the much milder penalties of the 5th section.

It seems that there is no penalty incurred by a purchaser who buys against the will of a licensed person (whose license is only to sell liquor "not to be consumed on the premises"), insists on drinking the liquor on such premises immediately after buying it; though he may in some cases be brought within the 18th section. The above 5th section seems intended to prevent any encouragement being given to such purchasers, who, if not checked, might practically turn a house which was not licensed for consumption into one which was so licensed.

The part *within brackets* was repealed by Licensing Act, 1875, section 33, but see that Act, section 13. The justices may order this conviction to be recorded.

6. *Evasion of law as to drinking on premises contrary to license.* Sect. 6.
] If any person having a license to sell intoxicating liquors not to be drunk on the premises, himself takes or carries, or employs or suffers any other person to take or carry, any intoxicating liquor out of or from the premises of such licensed person for the purpose of being sold on his account, or for his benefit or profit, and of being drunk or consumed in any other house, or in any tent, shed, or other building of any kind whatever, belonging to such licensed person, or hired, used, or occupied by him, or on or in any place, whether enclosed or not, or whether or not a public thoroughfare, such intoxicating liquor shall be deemed to have been consumed by the purchasers thereof on the premises of such licensed person, with his privity and consent, and such licensed person shall be punished accordingly in manner provided by this Act.

[Any conviction for an offence under this section shall be recorded on the license of the person convicted.]

In any proceeding under this section it shall not be necessary to prove that the premises or place or places to which such liquor is taken to be drunk belonged to, or were hired, used, or occupied by the seller, if proof be given to the satisfaction of the court hearing the case that such liquor was taken to be consumed thereon or therein with intent to evade the conditions of his license.

This section seems to be an attempt to explain more fully the circumstances which will amount to the offence described in section 5. It attempts to punish any evasion of the statute which consists in allowing people to drink liquor on other premises, for the profit of the seller, when the license is one for the sale of liquor "not to be drunk on the premises." It seems to prevent the holder of a particular license doing substantially the very thing which his license forbids ; for if his customers could drink

sect. 6. the liquor in the immediate neighbourhood the house would be used practically in the same way as if licensed for consumption on the premises.

NOTE.

This section is confined to cases where the seller has a licence "not to be drunk on the premises," and the liquor is consumed in some other premises, or building, but sufficiently near to be used as if they were the same premises.

The words at the end of the first paragraph, "shall be punished accordingly in manner provided by this Act," must mean the penalties incurred are those in the 5th section. See note to that section.

The whole section seems not to apply to the case where liquor was sold before leaving the premises, but only where it is not then actually sold and was taken to be hawked or to be sold in some neighbouring place. If, for example, a previous order is given for liquor to be sent to premises this would be a legal sale except where the liquor was understood to be drunk on the premises. section 5. To make out the offence, the liquor must have been sold for the profit of the licensed person, and the place of intended consumption of the liquor must have been in contemplation of the seller before the consumption was effected. The place of consumption may be, (1) Any tent, shed, or other building adjoining the licensed place, if belonging to or hired or used by the seller, and *prima facie* proof of hiring or using will be the fact of consumption in such place, with the seller's knowledge or intention, but this *prima facie* evidence may be contradicted; (2) Any place of consumption may also be "any place, whether enclosed or not, and whether or not a public thoroughfare." As the words would *prima facie* include the whole world, there must necessarily be some implied restriction. The highway must obviously be adjacent to the house, or within view of the house, otherwise the connection between the sale and consumption would be too remote. The "enclosed place" cannot include the seller's own house, or tent, or shed, otherwise the liquor could be consumed in any conceivable place be legally consumed. Where the purchaser's premises adjoin, his drinking the liquor obtained on the highway close to his own premises, as to the licensed premises, is no offence: *Bath v. Whitham* C. P. D. 175; 42 J. P. 375; 26 W. R. 617. The liquor need not be the same as that which the license authorises to be sold.

As to proof of consumption, see also section 62, *post*.

With regard to the proof mentioned in the last paragraph that the liquor was taken to be consumed therein, *i.e.*, on the premises, the only reasonable construction seems to be, that it is intended by the seller that the liquor should be taken by

for the purpose of consuming it on premises which, to this section, must be deemed equivalent to the seller's uses, and thus of doing what the statute meant to prohibit liquor must have been taken "with intent," and the intent must mean "the intent of the seller," for the buyer may, at the request of the seller, drink it on the premises, and the seller is not to be held liable; at least, if he had no reasonable ground to believe that this defiance of law would be perpetrated there. The *proviso* within brackets was repealed by Licensing Act, 1874, s. 1, but see that Act, section 13. The justices may order a conviction to be recorded.

Sect. 6.**NOTE.**

Sale of spirits to children.] Every holder of a licence who sells or allows any person to sell, to be sold on the premises, any description of spirits to a person apparently under the age of sixteen years, is liable to a penalty not exceeding twenty shillings for the first offence, and not exceeding forty shillings for the second and any subsequent offence.

Under an application of the enactment 2 & 3 Vict. c. 47, s. 43 (repealed by this Act, and formerly confined to the metropolitan police district), to England. In the city of London a similar enactment still seems to be in force (2 & 3 Vict. c. xciv. s. 1 applicable to all excisable liquors.

Under 50 Vict. c. 56, *post* (which is to be construed as one with the Licensing Acts 1872 and 1874), section 1, every holder of a licence who knowingly sells or allows any person to sell any quantity of intoxicating liquors to any person under the age of sixteen years for consumption on the premises by any person of such age as aforesaid, shall be liable to a penalty not exceeding 20s. for the first offence, and not exceeding 40s. for the second and any subsequent offence.

Under the first enactment it is immaterial who consumes the liquor. Under the second enactment the liquor must be consumed on the premises by some person under sixteen.

The words "any person apparently under the age of sixteen years" leave it to the discretion of the justices to find that fact, and, arriving at their conclusion, they may be guided by the evidence of witnesses, as well as their own judgment, though their evidence will be sufficient. If, at the hearing, it be proved that a person apparently under sixteen, the person is above sixteen, then the conviction will not be justified in convicting: but such a ground

Sect. 7. would not be sufficient for quashing a conviction after it had once made on the best judgment the justices could arrive at the time being.

NOTE.

With regard to any kind of liquor sold to a person under thirteen, in order to convict the holder of the license or manager, he must be proved to have knowingly sold to a person; that the person is under thirteen years of age; and that it was for consumption on the premises by a person under thirteen (not necessarily the same person under thirteen). As to a person under thirteen, it seems that the jurisdiction to convict does not depend on the mere fact of the age, but, as in the enactments, on the apparent age, or, in other words, the knowledge of the license holder or manager as to that fact. Both of both enactments seem not to throw the risk of finding a person under the licensed person as in sections 13 and 16. See those sections.

8. *Sale to be by standard measure.*]

Every person shall sell all intoxicating liquor which is sold at retail and not in cask or bottle, and is not sold in any quantity less than half a pint, in measures according to the imperial standards.

Every person who acts or suffers any person to act in contravention of this section shall be liable to a penalty not exceeding for the first offence, ten pounds, and not exceeding for any subsequent offence twenty pounds, and shall be liable to forfeit the illegal measure in which the liquor was sold.

The penalty in this section is incurred only by the person who sells or suffers his servants to sell and act in contravention of the section. There may be cases where the keeper of the shop shows successfully that he did not suffer his servants to sell measures not marked, as where the servant has, in disobedience of his orders, so sold. This penalty will apply to unlicensed persons selling, and is a cumulative penalty. A person who uses earthen mugs, and serves customers with them, impliedly represents them to be of imperial measure, and if they are unstamped they will be liable to seizure: *R. v. A*

Sect. 8.

NOTE.

J. M. C. 129; 3 E. & E. 568; 25 J. P. 69; 3 L. T. 699; 9 B. 278; *Washington v. Young*, 19 L. J. Exch. 348; 5 Ex.

B. But where the customer asks for a glass or other quantity which is not a known legal measure of capacity like a half pint, no offence will be committed by the seller whatever may be the capacity of the glass. The Act must be literally complied with whenever a legal denomination of measure is the thing demanded, and that measure is more than half a pint.

The forfeiture of the illegal measure is discretionary in the cases under this section.

In *Addy v. Blake*, 19 Q. B. D. 478; 51 J. P. 599; 56 L. T. 711; W. R. 719, B. went into a licensed house of A. and asked for a pint of beer. A. went into a back parlour, poured the liquor into a stamped measure not seen by B. and then into a jug and delivered the jug to B., and the court held that this was not a breach by imperial measure, as the measure was not seen by B., and therefore A. had committed the offence under this section.

The Weights and Measures Act, 41 & 42 Vict. c. 49, s. 22, does not subject any one to a fine if the vessel is not represented as containing any amount of imperial measure, or if he does not use or intend to use it as a measure. But every measure of capacity must have the denomination thereof stamped on the outside of the measure in legible figures and letters (section 28). A measure stamped by an inspector is a legal measure (section 45). A measure for liquids partly of glass and partly of metal or other transparent medium may have the capacity indicated by a level drawn through the transparent part (section 46). The inspector, if authorised in writing by a justice of the peace, may inspect measures and seize unjust measures, and to refuse examination is subject to a fine of 5*l.* (section 48). All appeals against convictions under the Weights and Measures Act are now regulated by the Summary Jurisdiction Act, 47 & 48 Vict. c. 43, s. 41. See notes to section 52 of this Act, *post*.

9. *Penalty on internal communication between licensed premises and house of public resort.*]

Every person who makes or uses, or allows to be made or used, any internal communication between any licensed premises and any unlicensed premises which are used for public entertainment or resort, or as a refreshment house, shall be liable to a penalty not ex-

LICENSING ACT, 1872, s. 10.

sect. 9. exceeding ten pounds for every day during which such communication remains open.

In addition to any penalty imposed by this section, if any person convicted of an offence under this section shall, if he be the holder of a license, forfeit such license.

A similar enactment and more extensive is in the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 45, and the City of London Act, 2 & 3 Vict. c. xciv. s. 29.

This penalty is imposed on the occupier of the unlicensed as well as of the licensed premises. There seems no reason why the internal communication should be large enough to allow persons to pass through.

A place of public resort may be any ordinary shop; it may be an auction room: *Sewell v. Taylor*, 7 C. B. (N.S.) 160; 29 L. J. M. C. 50; 1 L. T. 37; or a cricket ground: *Turnbull v. Appleton*, 45 J. P. 69; or a railway platform: *Ex parte Davis*, 2 H. & N. 148; 26 L. J. M. C. 178; 21 J. P. 280.

A place of public entertainment may be a public dancing room, or music room, or theatre, as to which see notes to section 14, *post*.

As to what is a refreshment house, see 23 Vict. c. 27, s. 6, and notes, *post*.

The forfeiture of the license of the licensed person convicted is imperative, or rather follows on the conviction by operation of the statute; and the justices have no discretion in the matter. As to the effect of it, and as to how the landlord may protect himself against the consequences of a conviction for this offence of his tenant, see Licensing Act, 1874, section 15, *post*.

This section does not interfere with the natural right of any licensed person to enlarge his premises by adding other premises so long as both are used as one house. See section 74 and notes.

10. Penalty on illicit storing of liquor.] If any licensed person has in his possession on the premises in respect of which his license is granted, any description of intoxicating liquor which he is not authorised to sell, unless he shall account for the possession of the same to the satisfaction of the court by

which he is tried, he shall forfeit such liquor and the vessels containing the same, and shall be liable to a penalty not exceeding for the first offence, ten pounds, and not exceeding for any subsequent offence, twenty pounds. Sect. 10.

This section is confined to the case of a person being licensed to sell only some kinds of liquor and having a different kind of liquor in his premises, in which case, unless he can account for the possession of such last-mentioned liquor, he will incur the penalty. If, for example, a beerhouse keeper has a cask of spirits or wine in his premises and is summoned under this section, it will be for the justices to judge whether the cask of wine or spirits was for his own personal use only, as it may well be. The justices must decide whether his account is only a pretence. In any event he must have an opportunity of giving his account of the matter before the liquor is forfeited: *Gill v. Bright*, 36 J. P. 168; 41 L. J. M. C. 22; 25 L. T. (N.S.) 591; 20 W. R. 248.

A power to search for liquors not only in licensed premises, but in any place where such liquors are not authorised to be sold is given by the Licensing Act, 1874, section 17. See notes to that section.

See also enactment as to wine sellers having spirits in their premises, 23 Vict. c. 27, s. 25, *post*.

11. *Names of licensed persons to be affixed to premises.*] Every licensed person shall cause to be painted or fixed, and shall keep painted or fixed on the premises in respect of which his license is granted, in a conspicuous place and in such form and manner as the [licensing justices] may from time to time direct, his name, with the addition after the name of the word "licensed," and of words sufficient, in the opinion of the said [justices] to express the business for which his license has been granted, and in particular of words expressing whether the license authorises the sale of intoxicating liquor to be consumed on or off the premises only, as the case may be; and no person shall

Sect. 11. have any words or letters on his premises importing that he is authorised as a licensed person to sell any intoxicating liquor which he is not in fact duly authorised to sell. Every person who acts in contravention of the provisions of this section shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.

The words *within brackets* were inserted by the Licensing Act, 1874, section 28.

This section makes it the duty of the party licensed to apply to the licensing justices for information as to what form and manner of publication they have directed. But if none is directed, each party is nevertheless forbidden to state that he sells any kind of liquor which he is not in fact authorised to sell, and he will incur the penalty for this mis-statement alone. It will be for the justices to decide, as matter of law, whether the words or letters "import" that the person sells other liquors than he is entitled to do. In general before conviction the person is entitled to notice from the justices, who should lay down some general rule on the subject, clear and minute, so that parties may be able to comply with it. Should the license be a six-day license, there must be words indicating that such license is for six days only. See section 49, *post*. And if the license is an early closing license this must be stated. See Act, 1874, section 7, *post*. The not keeping up of the name and license is a continuing offence.

The obligation to "keep fixed" implies the duty to renew the words if defaced.

As to who are the licensing justices in this and other sections, see section 74 (definition of those words) and notes thereon; also Act, 1874, section 6, and notes.

Offences against Public Order.

12. *Penalty on persons found drunk.*] Every person found drunk in any highway or other public place, whether a building or not, or on any licensed premises, shall be liable to a penalty not exceeding ten shillings, and on a second conviction within a

period of twelve months shall be liable to a penalty Sect. 12.
not exceeding twenty shillings, and on a third or subsequent conviction within such period of twelve months be liable to a penalty not exceeding forty shillings.

Every person who in any highway or other public place, whether a building or not, is guilty while drunk of riotous or disorderly behaviour, or who is drunk while in charge on any highway or other public place of any carriage, horse, cattle, or steam-engine, or who is drunk when in possession of any loaded fire-arms, may be apprehended, and shall be liable to a penalty not exceeding forty shillings, or, in the discretion of the court, to imprisonment, with or without hard labour, for any term not exceeding one month.

Where the court commits any person to prison for non-payment of any penalty under this section, the court may order him to be imprisoned with hard labour.

This section applies to premises having an *occasional* license : Licensing Act, 1874, section 20.

By section 60 a justice who is a brewer, &c., may take part in the disposal of cases under this section if the offence do not relate to premises in which he is interested as defined by that section.

The statute 21 Jas. 1, c. 7, as to drunkenness, being repealed by the second schedule, this section is now the general enactment dealing with the punishment of drunkenness.

Public place.] The words "or other public place, whether a building or not," coming after the word "highway," confine this offence to a highway, or a street, or a building like a market or pier, where the public have a right to be. The words "public place" have been held to include a railway carriage while carrying passengers : *Langrish v. Archer*, 10 Q. B. D. 44; 47 J. P. 295; 47 L. T. 548. The description of place here given is not quite so extensive as the words "place of public resort," used in section 9, which have been held, for example, to include a railway station : *Ex parte Davis*, 2 H. & N. 149; 21 J. P. 280; 26 L. J. M. C. 178; a house where an auction was held : *Sewell v. Taylor*, 7 C. B. (N.S.) 160;

Sect. 6. the liquor in the immediate neighbourhood the house would be used practically in the same way as if licensed for consumption on the premises.

NOTE.

This section is confined to cases where the seller has a license "not to be drunk on the premises," and the liquor is consumed in some other premises, or building, but sufficiently near to be used as if they were the same premises.

The words at the end of the first paragraph, "shall be punished accordingly in manner provided by this Act," must mean that the penalties incurred are those in the 5th section. See notes to that section.

The whole section seems not to apply to the case where the liquor was sold before leaving the premises, but only where it was not then actually sold and was taken to be hawked or to be sold in some neighbouring place. If, for example, a previous order was given for liquor to be sent to premises this would be a lawful sale except where the liquor was understood to be drunk as in section 5. To make out the offence, the liquor must have been sold for the profit of the licensed person, and the place of intended consumption of the liquor must have been in contemplation of the seller before the consumption was effected. The place of consumption may be, (1) Any tent, shed, or other building than the licensed place, if belonging to or hired or used by the seller; and *prima facie* proof of hiring or using will be the fact of the consumption in such place, with the seller's knowledge or intent; but this *prima facie* evidence may be contradicted; (2) The place of consumption may also be "any place, whether enclosed or not, and whether or not a public thoroughfare." As these words would *prima facie* include the whole world, there must of necessity be some implied restriction. The highway must obviously be adjacent to the house, or within view of the house, otherwise the connection between the sale and consumption will be too remote. The "enclosed place" cannot include the purchaser's own house, or tent, or shed, otherwise the liquor never could in any conceivable place be legally consumed. Thus, where the purchaser's premises adjoin, his drinking the beer obtained on the highway close to his own premises, as well as to the licensed premises, is no offence: *Bath v. White*, 3 C. P. D. 175; 42 J. P. 375; 26 W. R. 617. The liquor sold need not be the same as that which the license authorises to be sold.

As to proof of consumption, see also section 62, *post*.

With regard to the proof mentioned in the last paragraph, that the liquor was taken to be consumed therein, *i.e.*, on other premises, the only reasonable construction seems to be, that it was intended by the seller that the liquor should be taken by the

Sect. 6.**NOTE.**

consumer for the purpose of consuming it on premises which, according to this section, must be deemed equivalent to the seller's own premises, and thus of doing what the statute meant to prohibit. The liquor must have been taken "with intent," and the intent must mean "the intent of the seller," for the buyer may, in defiance of the seller, drink it on the premises, and the seller could not be held liable; at least, if he had no reasonable expectation that this defiance of law would be perpetrated there.

The part *within brackets* was repealed by Licensing Act, 1874, section 33, but see that Act, section 13. The justices may order this conviction to be recorded.

7. *Sale of spirits to children.*] Every holder of a license who sells or allows any person to sell, to be consumed on the premises, any description of spirits to any person apparently under the age of sixteen years, shall be liable to a penalty not exceeding twenty shillings for the first offence, and not exceeding forty shillings for the second and any subsequent offence.

This is an application of the enactment 2 & 3 Vict. c. 47, s. 43 (now repealed by this Act, and formerly confined to the metropolitan police district), to England. In the city of London a similar enactment still seems to be in force (2 & 3 Vict. c. xciv. s. 27), and applicable to all excisable liquors.

By 49 & 50 Vict. c. 56, *post* (which is to be construed as one with the Licensing Acts 1872 and 1874), section 1, every holder of a license who knowingly sells or allows any person to sell any description of intoxicating liquors to any person under the age of thirteen years for consumption on the premises by any person under such age as aforesaid, shall be liable to a penalty not exceeding 20s. for the first offence, and not exceeding 40s. for the second and any subsequent offence.

Under the first enactment it is immaterial who consumes the spirits. Under the second enactment the liquor must be consumed on the premises by some person under thirteen.

The words "any person apparently under the age of sixteen years," leave it to the discretion of the justices to find that fact, and in arriving at their conclusion, they may be guided by the opinion of witnesses, as well as their own judgment, though their own view will be sufficient. If, at the hearing, it be proved that, though apparently under sixteen, the person is above sixteen, then the justices will not be justified in convicting: but such a ground

Sect. 7. would not be sufficient for quashing a conviction after it had been once made on the best judgment the justices could arrive at for the time being.

NOTE.

With regard to any kind of liquor sold to a person under thirteen, in order to convict the holder of the license or his manager, he must be proved to have knowingly sold to such person; that the person is under thirteen years of age; and that it was for consumption on the premises by a person under thirteen (not necessarily the same person under thirteen). As to proof of age under thirteen, it seems that the jurisdiction to convict will not depend on the mere fact of the age, but, as in the former enactment, on the apparent age, or, in other words, the knowledge of the license holder or manager as to that fact. The words of both enactments seem not to throw the risk of finding out the age on the licensed person as in sections 13 and 16. See notes to those sections.

8. *Sale to be by standard measure.*] Every person shall sell all intoxicating liquor which is sold by retail and not in cask or bottle, and is not sold in a quantity less than half a pint, in measures marked according to the imperial standards.

Every person who acts or suffers any person under his control or in his employment to act in contravention of this section shall be liable to a penalty not exceeding, for the first offence, ten pounds, and not exceeding for any subsequent offence twenty pounds, and shall also be liable to forfeit the illegal measure in which the liquor was sold.

The penalty in this section is incurred only by the person who sells or suffers his servants to sell and act in contravention of the section. There may be cases where the keeper of the house shows successfully that he did not suffer his servants to sell in measures not marked, as where the servant has, in disregard of his orders, so sold. This penalty will apply to unlicensed as well as licensed persons selling, and is a cumulative penalty. A publican who uses earthen mugs, and serves customers with them impliedly represents them to be of imperial measure, and if they are unstamped they will be liable to seizure: *R. v. Aulton*, 30

L. J. M. C. 129; 3 E. & E. 568; 25 J. P. 69; 3 L. T. 699; 9 W. R. 278; *Washington v. Young*, 19 L. J. Exch. 348; 5 Ex. 403. But where the customer asks for a glass or other quantity which is not a known legal measure of capacity like a half pint, then no offence will be committed by the seller whatever may be the capacity of the glass. The Act must be literally complied with whenever a legal denomination of measure is the thing demanded, and that measure is more than half a pint.

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NOTE.

The forfeiture of the illegal measure is discretionary in the justices under this section.

In *Addy v. Blake*, 19 Q. B. D. 478; 51 J. P. 599; 56 L. T. 711; 35 W. R. 719, B. went into a licensed house of A. and asked for a pint of beer. A. went into a back parlour, poured the liquor into a stamped measure not seen by B. and then into a jug and delivered the jug to B., and the court held that this was not a selling by imperial measure, as the measure was not seen by B., and therefore A. had committed the offence under this section.

The Weights and Measures Act, 41 & 42 Vict. c. 49, s. 22, does not subject any one to a fine if the vessel is not represented as containing any amount of imperial measure, or if he does not use or intend to use it as a measure. But every measure of capacity shall have the denomination thereof stamped on the outside of such measure in legible figures and letters (section 28). A measure stamped by an inspector is a legal measure (section 45). A measure for liquids partly of glass and partly of metal or other transparent medium may have the capacity indicated by a level line drawn through the transparent part (section 46). The inspector, if authorised in writing by a justice of the peace, may inspect measures and seize unjust measures, and to refuse examination is subject to a fine of 5*l.* (section 48). All appeals against convictions under the Weights and Measures Act are now regulated by the Summary Jurisdiction Act, 47 & 48 Vict. c. 43, sched. See notes to section 52 of this Act, *post*.

9. *Penalty on internal communication between licensed premises and house of public resort.*
Every person who makes or uses, or allows to be made or used, any internal communication between any licensed premises and any unlicensed premises which are used for public entertainment or resort, or as a refreshment house, shall be liable to a penalty not ex-

Sect. 9. ceeding ten pounds for every day during which such communication remains open.

In addition to any penalty imposed by this section any person convicted of an offence under this section shall, if he be the holder of a license, forfeit such license.

A similar enactment and more extensive is in the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 45, and the City of London Act, 2 & 3 Vict. c. xciv. s. 29.

This penalty is imposed on the occupier of the unlicensed as well as of the licensed premises. There seems no reason why the internal communication should be large enough to allow persons to pass through.

A place of public resort may be any ordinary shop; it may be an auction room: *Sewell v. Taylor*, 7 C. B. (N.S.) 160; 29 L. J. M. C. 50; 1 L. T. 37; or a cricket ground: *Turnbull v. Appleton*, 45 J. P. 69; or a railway platform: *Ex parte Davis*, 2 H. & N. 149; 26 L. J. M. C. 178; 21 J. P. 280.

A place of public entertainment may be a public dancing room, or music room, or theatre, as to which see notes to section 14, *post*.

As to what is a refreshment house, see 23 Vict. c. 27, s. 6, and notes, *post*.

The forfeiture of the license of the licensed person convicted is imperative, or rather follows on the conviction by operation of the statute; and the justices have no discretion in the matter. As to the effect of it, and as to how the landlord may protect himself against the consequences of a conviction for this offence of his tenant, see Licensing Act, 1874, section 15, *post*.

This section does not interfere with the natural right of any licensed person to enlarge his premises by adding other premises so long as both are used as one house. See section 74 and notes.

10. Penalty on illicit storing of liquor.] If any licensed person has in his possession on the premises in respect of which his license is granted, any description of intoxicating liquor which he is not authorised to sell, unless he shall account for the possession of the same to the satisfaction of the court by

he is tried, he shall forfeit such liquor and the Sect. 10.
 containing the same, and shall be liable to a
 not exceeding for the first offence, ten pounds,
 not exceeding for any subsequent offence, twenty
 3.

section is confined to the case of a person being licensed to
 y some kinds of liquor and having a different kind of
 n his premises, in which case, unless he can account for
 session of such last-mentioned liquor, he will incur the
 . If, for example, a beerhouse keeper has a cask of spirits
 in his premises and is summoned under this section, it
 for the justices to judge whether the cask of wine or
 was for his own personal use only, as it may well be. The
 must decide whether his account is only a pretence. In
 nt he must have an opportunity of giving his account of
 ter before the liquor is forfeited: *Gill v. Bright*, 36 J. P.
 L. J. M. C. 22; 25 L. T. (N.S.) 591; 20 W. R. 248.

wer to search for liquors not only in licensed premises, but
 place where such liquors are not authorised to be sold is
 y the Licensing Act, 1874, section 17. See notes to that

also enactment as to wine sellers having spirits in their
 s, 23 Vict. c. 27, s. 25, *post*.

Names of licensed persons to be affixed to
ses.] Every licensed person shall cause to be
 d or fixed, and shall keep painted or fixed on the
 es in respect of which his license is granted, in a
 cuous place and in such form and manner as the
 ing justices] may from time to time direct, his
 with the addition after the name of the word
 sed," and of words sufficient, in the opinion of
 id [justices] to express the business for which
 nse has been granted, and in particular of words
 sing whether the license authorises the sale of
 ating liquor to be consumed on or off the pre-
 only, as the case may be; and no person shall

Sect. 11. have any words or letters on his premises importing he is authorised as a licensed person to sell any intoxicating liquor which he is not in fact duly authorised to sell. Every person who acts in contravention of provisions of this section shall be liable to a penalty exceeding for the first offence ten pounds, and exceeding for the second and any subsequent of twenty pounds.

The words *within brackets* were inserted by the Licensing Act, 1874, section 28.

This section makes it the duty of the party licensed to inform the licensing justices for information as to what form and nature of publication they have directed. But if none is directed, the party is nevertheless forbidden to state that he sells any liquor which he is not in fact authorised to sell, and he will incur the penalty for this mis-statement alone. It will be for the justices to decide, as a matter of law, whether the words or "import" that the person sells other liquors than he is entitled to do. In general before conviction the person is entitled to call on the justices, who should lay down some general rule of subject, clear and minute, so that parties may be able to comply with it. Should the license be a six-day license, there must be words indicating that such license is for six days only. See section 49, *post*. And if the license is an early closing license, it must be stated. See Act, 1874, section 7, *post*. The not being up of the name and license is a continuing offence.

The obligation to "keep fixed" implies the duty to renew the words if defaced.

As to who are the licensing justices in this and other cases, see section 74 (definition of those words) and notes thereon. See Act, 1874, section 6, and notes.

Offences against Public Order.

12. Penalty on persons found drunk.] Any person found drunk in any highway or other public place, whether a building or not, or on any licensed premises, shall be liable to a penalty not exceeding ten shillings, and on a second conviction will

period of twelve months shall be liable to a penalty Sect. 12.
 not exceeding twenty shillings, and on a third or subsequent conviction within such period of twelve months shall be liable to a penalty not exceeding forty shillings.

Every person who in any highway or other public place, whether a building or not, is guilty while drunk of riotous or disorderly behaviour, or who is drunk while in charge on any highway or other public place of any carriage, horse, cattle, or steam-engine, or who is drunk when in possession of any loaded fire-arms, may be apprehended, and shall be liable to a penalty not exceeding forty shillings, or, in the discretion of a court, to imprisonment, with or without hard labour, for any term not exceeding one month.

Where the court commits any person to prison for non-payment of any penalty under this section, the court may order him to be imprisoned with hard labour.

This section applies to premises having an *occasional* license : Licensing Act, 1874, section 20.

By section 60 a justice who is a brewer, &c., may take part in the disposal of cases under this section if the offence do not relate to premises in which he is interested as defined by that section.

The statute 21 Jas. 1, c. 7, as to drunkenness, being repealed by the second schedule, this section is now the general enactment dealing with the punishment of drunkenness.

Public place.] The words "or other public place, whether a building or not," coming after the word "highway," confine this offence to a highway, or a street, or a building like a market or fair, where the public have a right to be. The words "public place" have been held to include a railway carriage while carrying passengers: *Langrish v. Archer*, 10 Q. B. D. 44; 47 J. P. 295; 47 L. T. R. 8. The description of place here given is not quite so extensive as the words "place of public resort," used in section 9, which have been held, for example, to include a railway station: *Ex parte Lewis*, 2 H. & N. 149; 21 J. P. 280; 26 L. J. M. C. 178; a house where an auction was held: *Sewell v. Taylor*, 7 C. B. (N.S.) 160;

Found Drunk.

Sect. 12. 23 J. P. 792; 29 L. J. M. C. 50; and also an alehouse itself: (v. *Coulton*, 2 E. & E. 695; 29 L. J. M. C. 125; 2 L. T. 216; 8 W. 412; 24 J. P. 596. If the party is drunk in the licensed premises he is now expressly made liable by this section; but if he is found drunk in a place merely of public resort, not being a highway, street, or some enlargement thereof, and *ejusdem generis*, then penalty is not incurred.

NOTE.

Drunk and riotous, &c.] The only exceptions where offence may be committed, though not on a highway, or street or public place, are where the person is in possession of loaded fire-arms when drunk, and where he is drunk on licensed premises. Probably, it was not intended that the offence as to fire-arms should be on a different footing from the others, but owing to the position of the clause in the sentence, this offence may be committed anywhere, whether in a public place or in a private house or ground. And there is nothing to require any evidence of any person being endangered by the drunken man.

The Highways and Locomotives Act, 1878, 41 & 42 Vict. c. s. 26, the Municipal Corporations Act, 1882, 45 & 46 Vict. c. s. 23, and the Local Government Act, 1888, 51 & 52 Vict. c. s. 85, having all been passed since the Licensing Act, 1872, question whether this word "carriage" includes a bicycle, & not affected by those Acts; and it has not yet been decided whether "carriage," as used in this 12th section would include a bicycle. See *Taylor v. Goodwin*, 4 Q. B. D. 228; 43 J. P. 65; L. T. 458; 48 L. J. M. C. 104; 27 W. R. 489.

Found drunk.] The penalty is incurred if the person is found drunk "on any licensed premises," that is to say, in an alehouse or any house mentioned in the Wine and Beerhouse Acts, &c., for which a license is in force either for consumption on or off the premises. See section 74. If he is found drunk in unlicensed premises he incurs no penalty. If he is drunk in licensed premises but is not "found" in the state of drunkenness, he escapes penalty. It seems not necessary that he should be "found" by a constable, for any one may be the prosecutor, but the prosecutor must "find" him drunk at the time. If the drunken person, when being found, has staggered out of the licensed premises into an adjoining field he will also escape the penalty. And if the licensed premises are his own house, the drunken person would obviously not be liable, except he was found drunk during open hours in the public part of the premises: *Lester v. Torrens*, 2 Q. B. 403; 41 J. P. 821; 25 W. R. 691; 46 L. J. M. C. 280.

A person "found drunk" under the first paragraph of the section cannot be apprehended by a constable under the authority

of this Act, though a constable, or indeed any private person, would be justified in taking a drunken person into any house or station to keep him out of danger, so long as he is not imprisoned therein against his will; and a drunken person generally has not a "will" until he becomes sober. Those found under the second paragraph, including a drunken person in possession of fire-arms, may be apprehended. There may, however, be power to apprehend given by other Acts in both cases: see the Towns Police Clauses Act, 10 & 11 Vict. c. 89, s. 29; the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 58; and the City of London Act, 2 & 3 Vict. c. xciv. s. 37.

Sect. 12.

NOTE.

Punishment.] The offences in the first and second paragraphs must be kept separate, and a person charged with one cannot be found guilty of another (*Martin v. Pridgeon*, 1 E. & E. 778; 7 W. R. 412; 28 L. J. M. C. 179; 23 J. P. 630; *Loadman v. Cragg*, 36 J. P. 743), unless the justices amend the summons and adjourn the hearing; or unless the defendant has waived the objection by appearing and taking part in defending himself: *R. v. Hughes*, 4 Q. B. D. 614; 43 J. P. 556; *R. v. Fletcher*, 40 L. J. M. C. 128; 35 J. P. 789; L. R. 1 C. C. R. 320; *R. v. Fletcher*, 48 J. P. 407. A single justice can dispose of the charges in the first paragraph. See section 51. The length of imprisonment for default of payment of penalty under the first part of the section will be according to the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 5. Where the punishment under the second clause is imprisonment merely, the commitment will be under 11 & 12 Vict. c. 43, s. 24, and the form in Summary Jurisdiction Rules, 1886.

The words "on a third or subsequent conviction," must be read with the words implied "for the same offence under this Act." And the person's conviction may be proved by a certified extract from the register kept by the clerk of the convicting court (42 & 43 Vict. c. 49, s. 22), or in some cases by a certified copy from the register of licenses: see section 58, *post*.

13. Penalty for permitting drunkenness.]
If any licensed person permits drunkenness or any violent, quarrelsome, or riotous conduct to take place on his premises, or sells any intoxicating liquor to any drunken person, he shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.

Permitting Drunkenness.

Sect. 13. [Any conviction for an offence under this shall be recorded on the license of the person convicted unless the convicting magistrate or justices shall otherwise direct.]

The offence may be committed in premises having an *on* license: Licensing Act, 1874, section 20.

Permitting or selling.] The offence here is in terms to a licensed person who permits or sells. Where the evidence was that a person had been drinking in a house, and three-quarters of an hour later was found drunk in a ditch about 100 yards distant, it was held that there was evidence on which the justices might convict the keeper of a licensed house under this section: *Ex parte Ethelstane*, (N.S.) 339; 40 J. P. 39. Where the customer is really the licensee holder cannot set up the defence that he was not drunk, or at least it was very doubtful whether he was so, for the risk covering the fact rests with the licensee holder: *Cuningham v. Cocq*, 13 Q. B. D. 207; 48 J. P. 599; 53 L. J. M. C. L. T. (N.S.) 265; 32 W. R. 769. Moreover, if a drunk and a sober man enter together, and the latter order for both, this will be deemed a selling to the drunk: *Scatchard v. Johnson*, 57 L. J. M. C. 41; 52 J. P. 389. At the same time, to permit implies that there was power to prevent, and if a customer becomes drunk, but not from the drink given in the house, the licensee holder cannot be deemed to have permitted it. A licensee holder cannot be convicted under this section for being drunk on his own premises, for any charge under this kind must be made under section 12, *ante*: *Warden v. C. P. D.* 74; 41 J. P. 120; 46 L. J. M. C. 111; 35 L. 852.

Liability for manager's acts.] Any servant, wife, or other person of the house will not be liable to be convicted for doing acts here prohibited; but they may make the licensee liable, and may themselves also in some cases be convicted as aiders and abettors, under 11 & 12 Vict. c. 43, s. 5: *v. Stuart*, 32 L. J. Q. B. 311; 3 B. & S. 913; 27 J. 8 L. T. 277; and their acts will render the licensee person liable unless there is strong evidence that the latter gave express orders to the contrary, and did what he could to enforce his orders. The courts will hold this to be one of the excepted cases

*Liability for Manager.***Sect. 13.****NOTE.**

the master is responsible criminally for the act of his servant or manager; if it be held otherwise, the statute may be very easily evaded. It may be reasonably assumed that the law requires some responsible person to be always on such premises, and in charge of them, who represents the master in the conduct of the house; and though a master is not usually responsible for the crimes of his servant, this may well be deemed to be an exception; and it has been so held in cases under sections 15, 16, and 17. See notes to those sections. In some cases, where the act done by a servant is done for the master's benefit in the course of the business, and causes a nuisance either to an individual or the public, the master, though taking no part, may be indictable in respect of the act done: *R. v. Stephens*, L. R. 1 Q. B. 702; 35 L. J. M. C. 251; 14 L. T. 593; 14 W. R. 859; 30 J. P. 822. In other Acts, such as the Cattle Diseases Act, the Bread Act, the Nuisances Removal Act, the Mines Act, cases have occurred which have been mostly decided according to the general rule that the master is not liable if the servant alone, without the master's knowledge or against his express orders, has committed the act prohibited. At the same time, there must be some one on licensed premises to conduct the house, and the master must in that view be the person liable for acts done knowingly by the servant or manager in contravention of many of these enactments. See a case of a chimney sending forth black smoke, the servant having lighted the fire, and the master was held liable: *Jarves v. Akroyd*, L. R. 7 Q. B. 474; 41 L. J. M. C. 110; 36 J. P. 80; 26 L. T. 437; 20 W. R. 671. On the other hand, if the master has done all in his power to make a furnace consume its own smoke, and has appointed a careful servant, he is not liable: *Bisholm v. Doulton*, 22 Q. B. D. 736; 53 J. P. 292; 58 L. J. M. C. 32. So where a baker was held not liable for alum being in bread, neither baker nor servant having any knowledge of it: *Core v. Ames*, L. R. 7 Q. B. 135; 41 L. J. M. C. 19; 36 J. P. 519. See case of a servant neglecting to disinfect premises, and the master held liable: *Searle v. Reynolds*, 7 B. & S. 704; 14 L. T. 518; 31 J. P. 4; *R. v. Handley*, 9 L. T. 827. It is absolutely necessary that there should be some evidence of knowledge on the part of the master or servant, as was held where the servant of H., by direction of a customer of H., placed a portable steam engine in a place prohibited by statute, and the master was not liable: *Larrison v. Leaper*, 5 L. T. (N.S.) 640; 26 J. P. 373.

In a conviction under this section it will not be necessary to state the names of the persons who were permitted to be drunk: *Fray v. Toke*, 17 L. J. M. C. 183; 12 Q. B. 492.

The second and third offence need not be for precisely the same

Harbouring Prostitutes.

Sect. 13. offence as the former. Thus, one may be for permitting drunkenness, another may be for permitting quarrelsome conduct, riotous, &c. But the offences must all be under this section the Licensing Acts.

NOTE.

The part *within brackets* was repealed by Licensing Act, 1874, section 33; but see that Act, section 13. The justices may on this conviction to be recorded.

14. Penalty for keeping disorderly house

If any licensed person knowingly permits his premises to be the habitual resort of or place of meeting of reputed prostitutes, whether the object of their resorting or meeting is or is not prostitution, he shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.

[Any conviction for an offence under this section shall, unless the convicting magistrate or justices are otherwise directed, be recorded on the license of the person convicted.]

This offence may be equally committed while there is an *occasional* license for the place: Licensing Act, 1874, section 33.

The part *within brackets* was repealed by Licensing Act, 1874, section 33; but see that statute, section 13. The justices may on this conviction to be recorded.

A penalty is also imposed by the Towns Police Act, 10 Vict. c. 89, s. 35, for suffering prostitutes or thieves to assemble in which applies to alehouses: *Cole v. Coulton*, 2 E. & E. 694; 13 P. 596; 29 L. J. M. C. 125; 2 L. T. 216; 8 W. R. 412.

The same remarks as were made in the notes to the 13th section apply to the above 14th section as regards the liability of a licensed person for his servant or manager disobeying the statute except that owing to the word "knowingly" being here the evidence of knowledge ought to be much more cogent in order to make the master liable for his servant or manager's knowledge.

Harbouring Thieves.

t of Prostitutes.] In order to prove the offence it must **Sect. 14.**
 1: (1) That the licensed person, or at least his manager, **NOTE.**
 1: women were reputed prostitutes, and the justices will
 into the grounds of belief of witnesses as to this evil
 n; (2) That he allowed them to remain longer than
 for reasonable refreshment, which is partly a matter of
 c, the nature of the meal or refreshment being generally
 materials for showing whether they remained longer
 necessary for its consumption.

are previous cases on the subject, under similar enact-
 f *Greig v. Bendino*, E. B. E. 133; 27 L. J. M. C. 294;
Huxtable, 1 E. & E. 780; 28 L. J. M. C. 221; *Whitfield*
idge, 30 J. P. 644. The constable having seen pros-
 eviously in the house is some evidence of the keeper's
 e of their character: *Parker v. Green*, 2 B. & S. 299; 31
 J. 133; 26 J. P. 247; 10 W. R. 316; *Belasco v. Hannant*,
 13; 31 L. J. M. C. 225; 26 J. P. 823; 6 L. T. 577; 10
 17; *Cole v. Coulton*, 2 E. & E. 695; 29 L. J. M. C. 125;
 196; 2 L. T. 216; 8 W. R. 412. The cases show that
 s are entitled, like other people, to refreshment, and
 nnot be reasonably implied from the fact of the licensed
 pplying them with refreshment that he permits them to
 in an unlawful manner.

ction has been considerably altered in its language from
 ous enactments. Unless the woman has remained longer
 emises than is necessary for the purpose of refreshment,
 that, though her object may be prostitution, yet the
 ill not be incurred by the licensed person till the time
 e refreshment has ceased. It is only after that time that
 ining on the premises can be inquired into; but for
 purpose she is there after that time is immaterial. And
 not resort for refreshment at all, then if the landlord
 to remain for any length of time, however short, he will
 to the penalty. The licensed person has power to turn
 nder the 18th section, and if he fails to do so he will run
 f the penalty.

it essential that the prostitutes who "meet" should be
 persons; it is enough that persons of their class fre-
 come to the house, and that one is there, though for the
 , if known as to character. And in any summons or
 1 it is not necessary to name the disorderly persons:
Toke, 12 Q. B. 492; 17 L. J. M. C. 183; 12 J. P. 804.

ture of license for harbouring thieves, &c.] A
 s. imposed on keepers of licensed houses for harbouring
 c., of a kindred character to the above.

Harbouring Thieves.

Sect. 14. The *Prevention of Crimes Act*, 1871, 34 & 35 Vict. c. 112, enacts as follows:—Every person who occupies or keeps lodging-house, beerhouse, public-house, or other house or where intoxicating liquors are sold, or any place of public entertainment or public resort, and knowingly lodges or knows harbours thieves or reputed thieves, or knowingly suffers to meet or assemble therein, or knowingly allows the deposit of goods therein, having reasonable cause for believing them stolen, shall be guilty of an offence against this Act, and be liable to a penalty not exceeding ten pounds, and in default of payment to be imprisoned for a period not exceeding four months, without hard labour, and the court before which he is brought may, if it think fit, in addition to or in lieu of any penalty, require him to enter into recognizances, with or without sureties, and if in Scotland to find caution, for keeping the peace or of good behaviour during twelve months: provided that—

- (1) No person shall be imprisoned for not finding sureties or cautioners in pursuance of this section for a longer period than three months; and
- (2) The security required from a surety or cautioner shall not exceed twenty pounds:

And any license for the sale of any intoxicating liquors, keeping any place of public entertainment or public resort, has been granted to the occupier or keeper of any such house or place as aforesaid, may, in the discretion of the court, be forfeited on his first conviction of an offence under this section, and on his second conviction for such an offence his license shall be forfeited and he shall be disqualified for a period of two years from receiving any such license; moreover, where two persons have been convicted under this section have taken place within a period of three years in respect of the same premises, whether the persons convicted were or were not the same, the court shall direct that for a period not exceeding one year from the date of the last of such convictions no such license as aforesaid shall be granted to any person whatever in respect of such premises; and any license granted in contravention of this section shall be void.

Any licensed person brought before a court in pursuance of this section shall produce his license for examination, and if his license is forfeited shall deliver it up altogether, and if a person wilfully neglects or refuses to produce his license he shall, in addition to any other penalty under this section, be liable on summary conviction to a penalty not exceeding five pounds.

35 Vict. c. 112, s. 10.

Any person convicted under 34 & 35 Vict. c. 112, s. 10

Seditious Meetings, &c.

Sect. 14.

NOTE.

Right of appeal against such conviction in the same manner as respects as a person may appeal who feels aggrieved by a conviction made by a court of summary conviction under the Licensing Act, 1872, and all the provisions of such last-mentioned Act, and all the provisions of any Act amending the same relating to an appeal from a conviction made by a court of summary jurisdiction under such last-mentioned Act shall apply accordingly : 39 & 40 Vict. c. 20, s. 20. The consequence of this last enactment is that a convicted person may appeal to the quarter sessions of the borough or city or to the county sessions as he would do in case of a refusal to grant or transfer of a license. See section 52 of Licensing Act, 1872, *post*.

Mode of proving a previous conviction is set forth in 34 & 35 Vict. c. 12, s. 18. The proceeding to convict is under the Summary Jurisdiction Act, section 17. See also the provision relating to subject in 42 & 43 Vict. c. 49, s. 22, in notes to 50th section of Licensing Act, 1872, *post*.

Prohibition of subscription by circular at an alehouse to get up a subscription for the wife and children of a convicted thief, several thieves and vagabonds, or the company, is an assembling of thieves within this Act. See *Marshall v. Fox*, L. R. 6 Q. B. 370 ; 24 L. T. (N.S.) 751 ; 11 M. C. 142 ; 19 W. R. 1108 ; 35 J. P. 631.

Forfeiture of license for holding seditious meetings. It is unlawful for any two or more justices of the peace acting for a county, stewardry, riding, division, city, town, or place, to declare on oath that any meeting of any society (or club), declared to be an unlawful combination and confederacy for any seditious purpose hath been held after the coming into force of this Act, at any house, room, or place licensed for the sale of beer, wine or spirituous liquors [with the knowledge and consent of the person keeping such house, room, or place], to declare and declare the license or licenses for selling ale, beer, or spirituous liquors granted to the person or persons keeping such house, room, or place to be forfeited ; and the person or persons keeping such house, room, or place shall from and after the date of such adjudication and declaration be subject to all and every the penalties and forfeitures for any offence committed after that day which such person or persons would be liable to if such license or licenses had expired or otherwise ceased to be in force on that day : 39 Geo. 3, c. 79, s. 14. There is now no regular form of adjudicating the forfeiture of such license : 39 Geo. 3, c. 79, s. 14. The above 14th section of 39 Geo. 3, c. 79, is in identical words (but including the words in brackets), as amended by statute 57 Geo. 3, c. 19.

Music and Dancing Licenses.

Sect. 14. *Other similar offences by license holders.]* The offences which may be committed by license holders in reference to *games and betting* are set forth in the Licensing Act, 1872, section 14, and notes, *post*. A cock fight took place in a bowling alley of a public-house, and the court held that the keeper could not be convicted under the Cruelty to Animals Act, 12 & 13 Vict. c. 2, s. 2, of assisting as it was not a place kept for such fighting. *Clarke v. Hague*, 24 J. P. 517; 29 L. J. M. C. 105; 2 E. & E. 288; 8 W. R. 363; *Morley v. Greenhalgh*, 3 B. & S. 374; 32 L. J. M. C. 93; 7 L. T. 624; 11 W. R. 263; 27 J. P. 197.

NOTE.

There are also offences by keepers of licensed houses as to *wages paid* in public-houses. See *post*, 46 & 47 Vict. c. 31, s. 3, and notes, where offences as to *holding polls* and election committees in rooms in public-houses (16 & 17 Vict. c. 68, s. 6; 46 & 47 Vict. c. 51, s. 20; 47 & 48 Vict. c. 20, s. 16) are collected.

For public entertainments on *Sunday*, see 37 & 38 Vict. c. 3, s. 3, and notes, *post*.

Unlicensed music and dancing places deemed disorderly houses.] Whereas the multitude of places of entertainment for the lower sort of people is another cause of thefts and robberies, as they are thereby tempted to spend their small substance in riotous pleasures, and in consequence are put on unlawful methods of supplying their wants, and renewing their pleasures: In order therefore to prevent the said temptation to thefts and robberies, and to correct as far as may be the habit of idleness, which has become too general over the whole kingdom, and is productive of much mischief and inconvenience: Be it enacted by the authority aforesaid, that from and after the 1st day of December 1872, any house, room, garden, or other place kept for public dancing, music, or other public entertainment of the like kind in the cities of *London and Westminster*, or within twenty miles thereof, without a license had for that purpose, from the last preceding Michaelmas quarter sessions of the peace, to be held for the county, city, riding, liberty, or division in which such house, room, garden, or other place is situate (who are hereby authorised and empowered to grant such licenses as they in their discretion shall think proper), signified under the hands and seals of four or more of the justices there assembled, shall be deemed a disorderly house or place; and every such license shall be signed and sealed by the said justices in open court, and afterwards publicly read by the clerk of the peace, together with the names of the justices subscribing the same; and no such license shall be granted at any adjourned sessions; nor shall any fee or reward be taken for any such license; and it shall and may be lawful to

*Music and Dancing Licenses.***Sect. 14.****NOTE.**

for any constable, or other person, being thereunto authorised, warrant under the hand and seal of one or more of His Majesty's justices of the peace of the county, city, riding, division, liberty where such house or place shall be situate, to enter a house or place, and to seize every person who shall be found therein, in order that they may be dealt with according to law :

every person keeping such house, room, garden, or other place, without such license as aforesaid, shall forfeit the sum of £. 10 to such person as will sue for the same, and be otherwise punishable as the law directs in cases of disorderly houses : 25 & 26, c. 36, s. 2.

Though this statute is confined to the metropolitan district yet it is of the Local Improvement Acts of the large towns in the country contain an enactment nearly in the same words.

Notwithstanding the above Act, the Secretary of State or the Admiralty may give authority to manage or conduct any recreation ground for public dancing, music, or other public entertainment without any license : 52 Vict. c. 3, s. 7.

Licensed music and dancing places to have an inscription on them.] Provided always, and it is hereby further enacted that the authority aforesaid, that in order to give public notice that places are licensed pursuant to this Act, there shall be affixed and kept up in some notorious place over the door or entrance of every such house, room, garden, or other place kept open for any of the said purposes, and so licensed as aforesaid, an inscription in large capital letters, in the words following : *Notice*, "Licensed pursuant to Act of Parliament of the twenty-first of King George the Second ;" and that no such house, room, garden, or other place, kept for any of the said purposes, although licensed as aforesaid, shall be open for any of the said purposes between the hour of [noon] ; and that the affixing and keeping up of such inscription as aforesaid, and the said limitation or restriction in point of time, shall be inserted in, and made conditions of, every such license ; and in case of any breach of either of the said conditions, such license shall be forfeited, and shall be forfeited by the justices of peace in their next general or quarter sessions, and shall not be renewed ; nor shall any new license be granted to the same person or persons, or any other person on his behalf or any of their behalf, or for their use or benefit, directly or indirectly, for keeping any such house, room, garden, or other place, for any of the purposes aforesaid : 25 Geo. 2, c. 36, s. 3.

The word in brackets was substituted by 38 & 39 Vict. c. 21, s. 1 below.

Music and Dancing Licenses.

Sect. 14. Where a music and dancing license has been granted under Geo. 2, c. 36, the inland revenue are not bound to grant a license under 5 & 6 Will. 4, c. 39, s. 7, to the proprietors to sell liquors therein as the exemption from the necessity of a justices' license conferred by the Licensing Act, 1872, s. 72, applies only to theatres but not to places of public entertainment: *R. v. Inland Revenue*, 21 Q. B. D. 569; 52 J. P. 390; 57 L. J. M. C. 92; L. T. 378; 36 W. R. 696.

NOTE.

Theatres excepted.] Provided always, that nothing in the Act contained shall extend, or be construed to extend, to theatres royal in Drury Lane and Covent Garden, or the theatres commonly called the King's Theatre in the Haymarket, or any of them; nor to such performances and public entertainments which are or shall be lawfully exercised and carried on under or by virtue of letters patent, or license of the Crown, or the license of the Lord Chamberlain of His Majesty's Household; anything herein contained notwithstanding: 25 Geo. 2, c. 36, s. 4.

The rules as to theatre licenses are stated in notes to Licensing Act, 1872, s. 72, *post*.

Time of keeping open music and dancing rooms.] By the Public Entertainments Act, 1875, 38 Vict. c. 21, s. 1, section 1 of the recited Act, 25 Geo. 2, c. 36, shall be construed as if instead of the proviso, "that no such house, room, garden, or other place kept for any of the said purposes, although licensed as aforesaid, shall be open for any of the said purposes before the hour of five in the afternoon," there were substituted the proviso "that no such house, room, garden, or other place kept for any of the said purposes, although licensed as aforesaid, shall be open for any of the said purposes before the hour of noon." Provided, that if on any special occasion an occasional license of exemption shall have been granted under the twentieth section of the Licensing Act, 1872, in respect of any house, room, garden, or other place licensed under the recited Act, no penalty or forfeiture shall be incurred for contravention of section 3 of the recited Act, as hereby amended, on account of such house, room, garden, or other place being kept open for any of the purposes aforesaid on such special occasion from midnight until the hour specified in such occasional license as the hour of closing: 38 Vict. c. 21, s. 1.

Race-course licenses.] All race-courses within ten miles from Charing Cross must be licensed pursuant to 42 & 43 Vict. c. 18, s. 2. And the application for a license must be made to the

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the Michaelmas quarter sessions in the same manner
 sic and dancing licenses : section 4. A horse-race not
 l is deemed a nuisance : section 7.

NOTE.

es by county council.] The licensing of houses for
 dancing and race-courses was transferred to the county
 51 & 52 Vict. c. 41, s. 3.

music and dancing rooms require licenses.] The
 l dancing license does not authorise stage plays, as
 ire the theatre license : *Levy v. Yates*, 8 A. & E. 129 ;
mpson, 18 C. B. (N.S.) 680 ; 34 L. J. M. C. 149 ; 13
 ; 12 L. T. 386. As to theatre license, see *post*, section
 tes.

truing this Act of 25 Geo. 2, c. 36, and similar Acts, it
 held that some habitual use or several instances of so
 premises must be shown in order to render a license
 : *Marks v. Benjamin*, 5 M. & W. 565. Thus, an
 concert given in a licensed theatre on Ash Wednesday
 hin this Act : *Syers v. Conquest*, 37 J. P. 342 ; 28 L. T.
 V. R. 524 ; nor a room where a lecture and sacred music
 ; *Baxter v. Langley*, 32 J. P. 805 ; 38 L. J. M. C. 1.
 ry dancing school does not require a license : *Bellis v.*
 2 Esp. 722. A temporary use of a room for dancing on
 ion of a festival does not require a license : *Shutt v.*
 Esp. 128 ; *Gregory v. Tuffs*, 6 C. & P. 271, 281. But it
 nce that the dancing was in a public-house which had
 house license : *Green v. Botheroyd*, 3 C. & P. 471 ; nor
 ancing was kept comparatively private : *Clarke v. Searle*,
 ; nor that no money was charged for admission, being
 n a public-house : *Archer v. Waldegrave*, 4 Esp. 186 ;
Tuffs, 6 C. & P. 271 ; *Frailing v. Messenger*, 16 L. T.
 ' ; 31 J. P. 423. And a room kept for public dancing
 without a license is a disorderly house though no dis-
 : improper conduct is allowed : *R. v. Wolfe*, 13 J. P.
 3 a music license may be granted separately from the
 icense : *Brown v. Nugent*, L. R. 6 Q. B. 693 ; 40 L. J.
 6 ; 26 L. T. 880 ; 20 W. R. 89 ; 36 J. P. 22. It is
 l that the house or room was not kept exclusively for
Bellis v. Beal, 2 Esp. 592. If the music or dancing is
 r to something else, and is no substantial part of the
 nent, a license is not required : *Quaglieni v. Mathews*, 6
 74 ; 34 L. J. M. C. 116 ; 29 J. P. 439 ; *Hall v. Green*,
 1 ; 23 L. J. M. C. 15. A skating rink with band of
 nes within the statute, for the music was as important

Sect. 14. as the skating, and skating was *ejusdem generis* with *R. v. Tucker*, 46 L. J. M. C. 197; 41 J. P. 294; 2 Q. B. 36 L. T. 478; 25 W. R. 697.

NOTE.

If a local Act say a dancing house shall not be kept license, the justices will act rightly by granting a license one year : *Hoffmann v. Bond*, 40 J. P. 5; 32 L. T. 775

One penalty only is recoverable, though several penalties have occurred within six months on separate days : *Messenger*, L. R. 2 C. P. 583; 36 L. J. C. P. 337; 31 L. R. 10 Cox, 498.

15. *Penalty for permitting premises to be used as a brothel.*] If any licensed person is convicted of permitting his premises to be a brothel he shall be liable to a penalty not exceeding twenty pounds, and shall forfeit his license, and he shall be disqualified from holding any license for the sale of intoxicating liquors.

This enactment seems impliedly to confer a jurisdiction on the justices to convict the keeper of a licensed house in a way of an offence which is otherwise indictable at common law. As to a case of implied jurisdiction under the former Licensing Act, see *Diseases (Animals) Act*, see *Cullen v. Justices of Lancashire*, Q. B. 416; 37 J. P. 115; 41 L. J. M. C. 132; 26 L. T. 691; 691; *Johnson v. Colam*, L. R. 10 Q. B. 544; 40 J. P. 13 M. C. 185; 32 L. T. 725; 23 W. R. 697.

The same kind of evidence seems to be required in this section as in the case of a person being indicted for keeping a brothel, but according to section 59, either remedy is available with this qualification, that if one remedy is chosen the party cannot be punished again for the same offence. regards the evidence necessary to prove the offence material that there was no outward sign of indecency: *L. R. 1 C. C. R. 21*; 35 L. J. M. C. 93; 13 L. T. 382; 56; or that there was no actual disorderly conduct *Bendeno*, E. B. E. 133; 27 L. J. M. C. 294. If there is no conviction, the forfeiture and disqualification follow of course. If an excise license is also, by section 63, forfeited. One consequence of the forfeiture is, that no new tenant can apply either for a new license or a renewal of the license, the forfeiture dating from the conviction : *R. v. West Riding JJ.*, 21 Q. B. D. 258; 52 J. P. 1 L. J. M. C. 103; 36 W. R. 258.

ere a licensed person or his manager permits people to use premises for purposes of prostitution *once*, this is some evidence to support the charge of permitting the premises to be used as a brothel: *R. v. Justices of Parts of Holland*, 46 J. P. 312. In the case the constable, who was the prosecutor, refused to say whether he was standing when he discovered that the place was a brothel, and the court held that he was bound to answer an examination as to this, as it had an important bearing on the offence: *Webb v. Catchlove*, 50 J. P. 795.

The offence may be committed on premises having at the time a special license: Licensing Act, 1874, section 19.

Criminal Law Amendment Act offences.] The Criminal Law Amendment Act, 1885, 48 & 49 Vict. c. 69, s. 13, declares in nearly the same words as the above that any person who, being the occupier of premises, knowingly permits such premises to be used as a brothel, shall be liable, on summary conviction, to a penalty of 20*l.* or three months' imprisonment with or without labour. The only difference is the word "knowingly" in the present enactment.

Where formerly a landlord could not be indicted for keeping a house merely because he did not give notice to quit to the occupier using the premises for such a purpose (*R. v. Stannard*, 11 C. 349; 33 L. J. M. C. 61; 9 L. T. 428; 12 W. R. 208; 1 P. 20; *R. v. Barrett*, 1 L. & C. 263; 32 L. J. M. C. 36; 7 Q. B. 435; 11 W. R. 124), yet now a landlord who lets [or relets] premises with such knowledge may be convicted summarily: 48 & 49 Vict. c. 69, s. 13; *Sandford v. Clarke*, 21 Q. B. D. 398; 52 J. P. 773. The procedure now against keepers of brothels may be either by indictment or summary: *Kerwin v. Hines*, 52 J. P. 230.

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NOTE.

3. *Penalty for harbouring constable.*] If any person—

1. Knowingly harbours or knowingly suffers to remain on his premises any constable during any part of the time appointed for such constable being on duty, unless for the purpose of keeping or restoring order or in execution of his duty ; or
2. Supplies any liquor or refreshment, whether by way of gift or sale, to any constable on duty

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unless by authority of some superior officer
such constable; or

(3) Bribes or attempts to bribe any constable, he shall be liable to a penalty not exceeding, for first offence ten pounds, and not exceeding for second or any subsequent offence twenty pounds. Any conviction for an offence under this section shall, if the convicting magistrate or justices shall otherwise direct, be recorded on the license of the person convicted.]

This offence was formerly confined to the circumstances in the 1st sub-section, and the penalty was only 20s.: 23 c. 27, s. 39. The two last sub-sections increase the stringency of the punishment. Now a licensed person cannot lawfully employ a constable, while the latter is on duty, with any refreshment, on the order of a superior officer. A constable will be liable for execution of his duty in assisting to exclude drunkards under section 18, *post*, or in demanding the names of persons unlawfully on the premises under section 25, *post*, or in preventing or committing offences under Act, 1874, section 140, *post*.

If a servant or manager of the premises knowingly employs a constable on duty the master may be convicted, though he is really having nothing to do with the matter: *Mullins v. L. R.* 9 Q. B. 292; 43 L. J. M. C. 67; 29 L. T. (N.S.) 8; W. R. 297; 38 J. P. 629. But in all cases either the master or servant must know that the person is a constable on duty, his being in uniform, and not being asked if he was on duty, is good *prima facie* evidence of such knowledge. See also on this subject to sections 13, 14, 15, *ante*, and section 17, *post*.

There are similar enactments in 2 & 3 Vict. c. 93, s. 10 & 11 Vict. c. 89, s. 34.

The offence may be committed on premises having an occasional license: Licensing Act, 1874, section 20.

The part *within brackets* was repealed by Licensing Act, section 33, but see that Act, section 13. The justices may direct this conviction to be recorded.

17. Penalty for permitting gaming.] If a licensed person—

(1) Suffers any gaming or any unlawful game to be carried on on his premises; or

opens, keeps, or uses, or suffers his house to be Sect. 17.

opened, kept, or used in contravention of the Act of the session of the sixteenth and seventeenth years of the reign of Her present Majesty, chapter one hundred and nineteen, intituled "An Act for the Suppression of Betting Houses,"

be liable to a penalty not exceeding for the first ten pounds, and not exceeding for the second or subsequent offence twenty pounds.

or conviction for an offence under this section unless the convicting magistrate shall otherwise be recorded on the license of the person con-

offence may be committed on premises having an *occasional* Licensing Act, 1874, section 20.

1st sub-section is substantially the same as the usual clause original form of alehouse licenses.

ing for money.] The rule is, that no game, however in itself, if played for money, or money's worth, can be played in licensed premises. Thus nine-pins or skittles played are unlawful: *Danford v. Taylor*, 20 L. T. (N.S.) 483; 11 Q. B. 612. And it is immaterial whether the beer is drunk on the premises or not: *Luff v. Leaper*, 36 J. P. 773. So if cards are played for money: *Patten v. Rhymmer*, 3 E. & E. 1; 29 L. J. 39; 24 J. P. 342; 2 L. T. 352; 8 W. R. 496. It is no objection that the game such as skittle-pool is said to be mostly a matter of skill, if it is played for money: *Dyson v. Mason*, 22 Q. B. 568; 58 L. J. M. C. 55; 53 J. P. 261; 60 L. T. 265. More than the license holder were to lend money to a guest to play the game, the former could not recover it: *Foot v. Baker*, 6 Scott 411; 5 M. & Gr. 335.

far knowledge of the gaming must be proved.] If the game is played without the knowledge of the licensed person or the manager and is a mere casual frolic, no penalty is incurred by him: *Avards v. Dance*, 26 J. P. 437. But if the conduct of the landlord is such that he leaves the management of the house to a servant, and either he or such servant close his eyes to the game going on, the landlord will be guilty of the offence, his

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Gaming.

NOTE. gross negligence or wilful shutting of his own or his man eyes being equivalent to "suffering the gaming to be carried *Bosley v. Davies*, 1 Q. B. D. 84; 45 L. J. M. C. 27; 33 L. T. 528; 24 W. R. 140; 40 J. P. 550; *Redgate v. Haynes*, 1 Q. 89; 41 J. P. 86; 33 L. T. (N.S.) 779; 45 L. J. M. C. 65. where the manager goes to bed and leaves the house under management of "the boots" during late hours, and gaming on, the licensed person may be rightly convicted: *Crab Hole*, 43 J. P. 799. And where the skittle-alley was in charge a separate attendant, who allowed gambling, though disapproved generally by the license holder never to do so, the latter was to be rightly convicted; *Bond v. Evans*, 21 Q. B. D. 249; 56 L. J. M. C. 105; 59 L. T. 411; 36 W. R. 767. where all that was shown was, that the potman who was proved to be in charge, saw some gambling and did nothing to prevent it, and the master was in another part of the building knew nothing whatever about the matter, and the justices refused to convict, the High Court held they were right: *Some Hart*, 12 Q. B. D. 360; 53 L. J. M. C. 77; 48 J. P. 327.

Some games illegal per se.] There are some games illegal in themselves; others are illegal only when played for money. See an enumeration of illegal games in *Jenks v. Turpin*, 13 Q. B. D. 505; 53 L. J. M. C. 161; 50 L. T. 808; 48 J. P. 439. *Thun* and dice are not in themselves unlawful: *Allport v. Nutt*, 1 Q. B. D. 989; 14 L. J. C. P. 272; nor dominoes: *R. v. Ashton*, 11 J. P. 286; 16 J. P. 790; 22 L. J. M. C. 1. The games may be classified as being mostly games of skill: *Bew v. Harston*, 3 Q. B. D. 47; 47 L. J. M. C. 121; 26 W. R. 915; 42 J. P. 808; yet if played for money they are equally gaming: *Dyson v. Mason*, *supra*.

Friends of license holder.] The licensed keeper cannot avail himself of any exemption from this enactment on the ground that the persons playing at the game were his own private friends and not customers: *Patten v. Rhymer*, 3 E. & E. 1; 29 L. J. M. C. 189; 24 J. P. 342; 2 L. T. 352; 8 W. R. 496. And though the Act, 1874, section 30, *post*, allows him to keep private friends in his house after closing hours, he is still liable under this section if he allows them to game: *Hare v. Osborne*, 34 L. T. (N.S.) 347; 40 J. P. 759; *Cooper v. Osborne*, 35 L. T. 347; 40 J. P. 759.

There is no penalty imposed by this Act on the person who may be allowed to game in the house, unless, perhaps, the justices were to find as a fact that they were on the premises for the purpose of gaming, in which case see section 25, *post*.

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regard to *billiards*, though an alehouse keeper is exempt by Vict. c. 109, s. 11, from requiring a special license to be able, yet if the customers play for money the play comes under the description of gaming. As to playing billiards after hours, see *post*, section 75, and notes. The statute *within brackets* was repealed by Licensing Act, 1874, s. 13; but see that statute, section 13. The justices may record a conviction to be recorded.

Unlawful gaming houses.] The question what is an unlawful gaming house under the Gaming Act, 8 & 9 Vict. c. 109, and the Gaming Houses Act, 17 & 18 Vict. c. 38, was discussed in *Jenks v. Jenks*, 13 Q. B. D. 505; 53 L. J. M. C. 161; 50 L. T. (N.S.) 1. P. 489, where the game of baccarat, as played, was held to be more a game of chance than of skill, and illegal. In *Rogier*, 1 B. & C. 272; 2 D. & Ry. 431, the court said that a gaming house tended to injure public morals it was illegal and a nuisance. And a keeping of a common gaming house was said to be illegal at common law: *R. v. Rice*, L. R. 1 C. C. R. 21; 13 M. C. 93; 14 W. R. 56; 13 L. T. 382. But mere gaming not in a common gambling house is not unlawful. *HAWKINS, J.*, said that the result of the statutes now is, that games are expressly declared to be absolutely forbidden, and gaming at which a penalty is attached. Such are ace, pharoah (faro), bassett, and hazard (*Mackinnell v. Robinson*, 4 W. 434), passage, and every other game with a die or dice (except backgammon) and roulette (or roly-poly), and any other game of chance. The other games are unlawful only if played in common gaming houses. Thus, bowling, coytling, bowls, half-bowl, tennis, dicing table, or carding, were unlawful in 1845, after which games of mere skill were said not to be. The Gaming Houses Act, 17 & 18 Vict. c. 38, was interpreted by *LAWKINS, J.*, to treat games of chance, or of chance and skill, as unlawful; but that the keeping of a common gaming house is in itself a nuisance and indictable.

Penalty for unlawful gaming houses.] The keeper of a house for unlawful gaming forfeits 500*l.*: 17 & 18 Vict. c. 38, s. 4. Justices, except in the metropolitan police district, may issue a special warrant authorise constables to enter places in which it is suspected that unlawful games are holden and arrest persons found therein: 8 & 9 Vict. c. 109, s. 3; 17 & 18 Vict. c. 38, s. 3. And like provisions are made for the metropolitan police district: 17 & 18 Vict. c. 109, ss. 6, 7. The obstruction of constables is punishable by 17 & 18 Vict. c. 38, ss. 1, 2. And persons found

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Betting houses.

NOTE. in gaming houses are dealt with as set forth in 8 & 9 Vict. c. 109; 17 & 18 Vict. c. 38, ss. 5, 6.

If two separate acts of betting and keeping of betting books are proved, this is some evidence of the offence of a common gaming house: *Footo v. Butler*, 41 J. P. 292.

When a person is arrested and brought before a justice he is entitled to demand an information and summons before going into a defence: *Blake v. Beach*, 45 L. J. 111; 40 J. P. 678; Ex. D. 320. See *R. v. Hughes*, 4 Q. B. D. 614, *ante*, p. 23.

Parties convicted may appeal to quarter sessions under the Summary Jurisdiction Acts, 17 & 18 Vict. c. 38, ss. 10, 11; 47 & 48 Vict. c. 43, sched. And as imprisonment may be ordered for 12 months they may, before the hearing, demand a trial by jury: 42 & 43 Vict. c. 49, s. 17. See this Act, 1872, ss. 51, 52, *post*.

Wagers on games.] All contracts by way of gaming or wagering are void; but such enactment does not apply to a subscription or contribution, or agreement to subscribe or contribute, for or towards any plate, prize, or sum of money to be awarded to the winner or winners of any lawful game, sport, pastime, or exercise: 8 & 9 Vict. c. 109, s. 18. This enactment makes void a wager on a game of billiards, as it is not within the proviso: *Parsons v. Alexander*, 5 E. & B. 263. The loser of a wager may, before the stakes have been paid over, repudiate the wager and recover his money from the stakeholder: *Hamp v. Walsh*, 1 Q. B. D. 189; *Diggle v. Higgs*, 2 Ex. D. 423; J. P. 245.

Keeping a betting house.] No house, office, room, or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof,—or any person using the same,—or any person procured or employed by or acting for or on behalf of such owner, occupier, or keeper, or person using the same,—or of any person having the care or management or in any manner conducting the business thereof,—betting with persons resorting thereto;—or for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper, or person as aforesaid, as or for the consideration for an assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse-race or other race, fight, game, sport, or exercise,—or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency as aforesaid; and every house, office, room, or other place opened, kept, or used for the purposes aforesaid, or any of them, is hereby

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to be a common nuisance and contrary to law: 16 & 17 Vict. c. 109, s. 1.

NOTE.

any house, room, office, or place opened, kept, or used for the purposes aforesaid, or any of them, shall be taken and held to be a common gaming house within the meaning of the Act: 16 & 17 Vict. c. 119, s. 2.

[*for keeping betting house.*] Any person who, being the owner or occupier of any house, office, room, or place, or a person using the same, shall open, keep, or use the same for the purposes hereinbefore mentioned, or either of them, or permit the same to be opened, kept, or used by any person for the purposes aforesaid, or either of them;—and any person having the care or management of, or in any manner conducting the business of, any house, office, room, or place, opened, kept, or used for the purposes aforesaid, or either of them, shall, on summary conviction thereof before any two justices of the peace, be liable to forfeit and pay such penalty, not exceeding 100*l.*, as shall be adjudged by such justices, and may be ordered by such justices to pay such costs attending such conviction as to the said justices shall seem reasonable; and on payment of such penalty and costs, or in the first instance on conviction by such justices it shall seem fit, may be committed to the gaol or house of correction, with or without hard labour, for a term not exceeding six calendar months: 16 & 17 Vict. c. 109, s. 3; 47 & 48 Vict. c. 43, sched.

A defendant may choose to plead guilty before the charge is gone into, and may be tried by jury: 42 & 43 Vict. c. 49, s. 17.

Separate acts of betting with strangers are proved and established, this is some evidence of keeping a betting house: *Butler*, 41 J. P. 792. But if the betting takes place only among the members of a club this is not an offence within these provisions: *Oldham v. Ramsden*, 44 L. J. C. P. 309; 32 L. T. 825; 53 L. J. 100.

Provision of section 3 of this Act (16 & 17 Vict. c. 119) is wholly repealed as regards license holders by the Licensing Act, 1869, section 17, the only effect being that one cannot be convicted under both enactments: *Sims v. Pay*, 58 L. J. M. C. 39; 20 Q. B. 20; 60 L. T. 602.

[*as to pay money on the event of a race, fight, &c.*] Any person who, being the owner or occupier of any house, office, place, or room, or any person acting for or on behalf of any such person, shall open, keep, or use the same for the purposes aforesaid, or either of them, shall, on summary conviction thereof before any two justices of the peace, be liable to forfeit and pay such penalty, not exceeding 100*l.*, as shall be adjudged by such justices, and may be ordered by such justices to pay such costs attending such conviction as to the said justices shall seem reasonable; and on payment of such penalty and costs, or in the first instance on conviction by such justices it shall seem fit, may be committed to the gaol or house of correction, with or without hard labour, for a term not exceeding six calendar months: 16 & 17 Vict. c. 109, s. 3; 47 & 48 Vict. c. 43, sched.

Sect. 17.*Betting houses.***NOTE.**

owner or occupier, or any person having the care or management or in any manner assisting in conducting the business thereof, who shall receive, directly or indirectly, any money or valuable thing as a deposit on any bet on condition of paying any sum of money or other valuable thing on the happening of any event or contingency of or relating to a horse-race or any other race, or fight, game, sport, or exercise, or as or for the consideration of any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any such event or contingency—and any person giving any acknowledgment note, security, or draft on the receipt of any money or valuable thing so paid or given as aforesaid, for any purpose or intended to entitle the bearer or any other person to receive any money or valuable thing on the happening of any such event or contingency as aforesaid,—shall, upon summary conviction by a justice of the peace before two justices of the peace, forfeit and pay such penalty, not exceeding 50*l.*, as shall be adjudged by such justices, and may be further adjudged by such justices to pay such costs attending such conviction as to the said justices shall seem reasonable; and if the non-payment of such penalty and costs, or in the first instance if to such justices it shall seem fit, may be committed to the common gaol or house of correction, with or without hard labour for any time not exceeding three calendar months: 16 & 17 Vict. c. 119, s. 4; 47 & 48 Vict. c. 43, sched.

And any money or valuable thing received by any such person as aforesaid as a deposit on any bet, or as or for the consideration of any such assurance, undertaking, promise, or agreement as aforesaid, shall be deemed to have been received to or for the use of the person from whom the same was received; and such money or valuable thing, or the value thereof, may be recovered accordingly, with full costs of suit, in any court of competent jurisdiction: 16 & 17 Vict. c. 119, s. 5.

But nothing in this Act contained shall extend to any person receiving or holding any money or valuable thing by way of stakes or deposit to be paid to the winner of any race, or for any sport, game, or exercise, or to the owner of any horse engaged in any race: 16 & 17 Vict. c. 119, s. 6.

Advertising betting houses.] Any person exhibiting or causing to be exhibited or published, any placard, handbill, card, writing, sign, or advertisement whereby it may be made to appear that any house, office, room, or place has been opened, kept, or used for the purpose of making bets or wagers in manner aforesaid, or for the purpose of exhibiting lists for betting, or with intent to induce any person to resort to

*Betting houses.***Sect. 17.****NOTE.**

a, office, room, or place for the purpose of making bets or in manner aforesaid, or any person who, on behalf of the owner or occupier of any such house, office, room, or place, or in using the same, shall invite other persons to resort thereto for the purpose of making bets or wagers in manner aforesaid, upon summary conviction thereof before two justices of the peace, forfeit and pay a sum not exceeding 30*l.*, and may be further adjudged by such justices to pay such costs attending such conviction as to the said justices shall seem reasonable; and on non-payment of such penalty and costs, or in the first instance, if to such justices it shall seem fit, may be committed to the common gaol or house of correction, with or without hard labour, for any time not exceeding two calendar months: 16 & 17 Vict. c. 119, s. 7.

Those who send, exhibit, or publish, or cause to be published, any letter, circular, telegram, placard, handbill, card, or advertisement offering information or advice as to bets or wagers, or to induce people to apply for information or advice, or to invite persons in such bet or wager, shall be subject to the penalties in the 7th section above quoted: 37 & 38 Vict. c. 15, s. 3. This enactment only refers to betting in betting houses: *Cox v. Andrews*, Q. B. D. 126; 48 J. P. 247.

Warrant to search suspected betting houses.] It shall be lawful for any justice of the peace, upon complaint made before him on oath that there is reason to suspect any house, office, room, or place to be kept or used as a betting house or otherwise, contrary to this Act, to give authority by special warrant under his hand, when in his discretion he shall think fit, to any constable or police officer, to enter with such assistance as may be found necessary into such house, office, room, or place, and, if necessary, to use force in making such entry, whether by breaking open doors or otherwise, and to arrest, search, and bring before a justice of the peace all such persons found therein, and to seize all cards, or other documents relating to racing or betting found in such house or premises; and any such warrant may be accorded to the form given in the first schedule annexed to the before-mentioned 8 & 9 Vict. c. 109: 16 & 17 Vict. c. 119, s. 11. See s. 39, tit. "Gaming House."

And if any superintendent belonging to the metropolitan police shall report in writing to the commissioners of police of the metropolitan police that there are good grounds for believing, and that he believes, that any house, office, room, or place within the metropolitan police district is kept or used as a betting house or otherwise, contrary to this Act, it shall be lawful for either of the said

Sect. 17. commissioners, by order in writing, to authorise the sup-
NOTE. tendent to enter any such house, office, room, or place, with
 constables as shall be directed by the commissioner to accom-
 him, and, if necessary, to use force for the purpose of effecting
 such entry, whether by breaking open doors or otherwise, and
 take into custody all persons who shall be found therein, and
 seize all lists, cards, or other documents relating to racing
 betting found in such house or premises: 16 & 17 Vict. c.
 s. 12. See *ante*, p. 39, tit. "Gaming House."

Appeal to quarter sessions.] Those who are convicted
 appeal to quarter sessions under the Summary Jurisdiction Act,
 16 & 17 Vict. c. 119, s. 13; 47 & 48 Vict. c. 43, sched.
 notes to 35 & 36 Vict. c. 94, s. 52, *post*.

18. *Power to exclude drunkards from licensed premises.*] Any licensed person may refuse to admit
 and may turn out of the premises in respect of which
 his license is granted any person who is drunken, violent
 quarrelsome, or disorderly, and any person whose
 presence on his premises would subject him to a penalty
 under this Act.

Any such person who, upon being requested in
 pursuance of this section by such licensed person, or
 agent or servant, or any constable, to quit such premises,
 refuses or fails so to do, shall be liable to a penalty
 exceeding five pounds, and all constables are required
 on the demand of such licensed person, agent, or servant
 to expel or assist in expelling every such person from
 such premises, and may use such force as may
 be required for that purpose.

The court committing any person to prison for
 payment of any penalty under this section may
 direct him to be imprisoned with hard labour.

This offence may be committed on premises having an *on-*
 license: Licensing Act, 1874, section 20.

In turning out a person who is drunken, violent, quarrel-

is disorderly, no more force can be lawfully used than is necessary to overcome the resistance of the person to be turned out. And a request to leave peaceably should always be first made to such person, and proved on the hearing of the charge. And the constable acts usually as the agent of the licensed person, unless he witnessed some violation of the Act. The persons whose presence on the premises would subject them to a penalty will be, for example, persons acting contrary to sections 14 to 17 inclusive. If the licensed person turn out a person who is not drunken, violent, quarrelsome, or disorderly, or whose presence would not subject him to a penalty, then such person, when turned out, cannot be convicted under this section. Where a chimney-sweep in his working dress came to the public-house bar amongst the company and refused to leave, it was held that he could be excluded by force, even though the premises were an inn : *Pigeon v. Legge*, J. P. 743. And the same where a person had a large dog accompanying him, which caused reasonable alarm : *R. v. Rymer*, Q. B. D. 136 ; 46 L. J. M. C. 108 ; 41 J. P. 199 ; 25 W. R. 415. As to the right of excluding persons, section 49 and notes, *post*.

Sect. 18.

NOTE.

A person cannot be convicted under the second paragraph of this section unless he has been drunken, violent, quarrelsome, disorderly, &c., and a previous request to leave addressed to him by the licensed person, his agent or servant, or a constable, is proved, and also a failure and refusal to leave thereupon. Where several persons are charged on one information for refusing to quit, this is a mere irregularity, and may be waived, and a separate conviction of each would be right : *Wells v. Cheney*, 36 J. P. 198.

The power to commit to prison for non-payment of the penalty only arises after insufficient distress, pursuant to 42 & 43 Vict. c. 49, s. 21, and the time of imprisonment must be regulated by the same Act, section 5. See notes to section 51, *post*.

Where one of two drunken soldiers came to a publican's house after being already refused, and being refused admission a second time, rushed in and demanded beer, and on being collared by the landlord and put out, the other attacked the landlord with a sharp instrument, and gave a wound which caused death, the judge held both were guilty of murder, for the landlord acted within his rights : *R. v. Willoughby*, 1 East P. C. 288.

19. Penalty on adulteration of intoxicating liquors repealed by Licensing Act, 1874, section 33. See that Act, section 14, and notes).

Sect. 20. **20.** *Possession of adulterated liquor or deleterious ingredients (repealed by Licensing Act, 1874, sect 33 and 14, post).*

21. *Schedule of deleterious ingredients (repealed by Licensing Act, 1874, sections 33 and 14, post).*

22. *Analysis of intoxicating liquor (repealed by Licensing Act, 1874, sections 33 and 14, post).*

Closing Licensed Premises in Case of Riot.

23. *Power of justices to close licensed premises in case of riot.*] Any two justices of the peace acting for any county or place where any riot or tumult happens or is expected to happen may order every licensed person in or near the place where such riot or tumult happens or is expected to happen to close his premises during any time which the justices may order ; and any person who keeps open his premises for the sale of intoxicating liquors during any time at which the justices have ordered them to be closed shall be liable to a penalty not exceeding fifty pounds ; and it shall be lawful for any person acting by order of any justice to use such force as may be necessary for the purpose of closing such premises.

This section is a re-enactment in language somewhat varied of 9 Geo. 4, c. 61, s. 20, and is now applied not only to alehouses but also to beerhouses, and all houses for which a justices' certificate is necessary. The penalty is increased from five pounds to ten pounds. It is essential in any conviction under this section to allege and prove specifically two things : 1. That the justice during a riot or tumult, &c., ordered the house to be closed and such order was served on the license holder ; 2. What were the hours or days when the premises were so ordered to be closed, so that it may be seen whether there was any excess of jurisdiction. A conviction which merely alleged that the defendant kept

premises "during a time at which the justices ordered them to be closed" was held bad as being too vague: *Newman v. Earl of Arundel*, 9 A. & E. 124. **Sect. 23.**
NOTE.

24. *Times of closing.* (*Repealed* by Licensing Act, 74, section 33. See that Act, sections 3, 5, 6, 9, 10, and notes.)

25. *Penalty on person found on premises during closing hours.*] If during any period during which any premises are required under the provisions of this Act to be closed, any person is found on such premises, he shall, unless he satisfies the court that he is an inmate, servant, or a lodger on such premises, or a *bonâ fide* traveller, or that otherwise his presence on such premises was not in contravention of the provisions of this Act with respect to the closing of licensed premises, be liable to a penalty not exceeding forty shillings.

Any constable may demand the name and address of any person found on any premises during the period during which they are required by the provisions of this Act to be closed, and if he has reasonable ground to suppose that the name or address given is false, may require evidence of the correctness of such name and address, and may, if such person fail upon such demand to give his name or address, or such evidence, apprehend him without warrant, and carry him, as soon as practicable, before a justice of the peace.

Any person required by a constable under this section to give his name and address, who fails to give the same, or gives a false name or address, or gives false evidence with respect to such name and address, shall be liable to a penalty not exceeding five pounds.

Sect. 25. Every person who by falsely representing himself to be a traveller or a lodger, buys or obtains, or to buy or obtain, at any premises any intoxicating liquor during the period during which such premises are closed in pursuance of this Act, shall be liable to a penalty not exceeding five pounds.

This section is a re-enactment in different language of repealed sections of 32 & 33 Vict. c. 27, s. 16, and 33 & 34 Vict. c. 29, s. 6.

Found on premises not in contravention of the section. The offence created by the first paragraph of the section is, a person being found on licensed premises during prohibited hours, not satisfying the court that he is an inmate, servant, or traveller, or otherwise not contravening the section. In order to convict the person found on the premises, it is not necessary that the keeper of the house should have committed any offence on the other hand, is it necessary in order to convict a person found on the premises should have consumed or purchased any liquor during the prohibited hours. The mere presence of the person found is sufficient *prima facie* evidence of the offence. The explanation, which will no doubt be given, will be, that the person found is a "friend of the licensee" and is on a visit of friendship or condolence or mutual assistance. It was under this Act, before the Act of 1874 passed, that it was unlawful for a licensed person to entertain a visitor on the premises even during prohibited hours, and in order to define the circumstances under which the friend will escape liability it is necessary to consider what meaning is to be given to the words "friend of the licensee" in connection with the provisions of this Act with respect to the sale of liquor. The only object of the provisions as to closing as declared in the Act, 1874, section 9, is to prevent the selling or exposing of liquor, or keeping open the premises for the sale or consumption of liquor during those hours, or allowing liquors already sold to be consumed there, or permitting anything equivalent to a sale or consumption, as explained by section 62; therefore the mere presence of the person found will not be contravened if there is no selling and no keeping open or exposing to sale or consumption of liquors on the premises during those hours by persons of the class of customers who are called chasers. It would seem to follow that if a person is found on the premises, and is a private friend, or has any lawful business there, the mere fact of the licensed person giving (or not giving) liquor to such visitor would not amount to any offence,

Sect. 25.

NOTE.

other hand, if the liquor was actually sold to, or consumed by, who is there as a customer, and not as a private friend, it is so. This view of the construction of this section has been clearly supported by the Act, 1874, section 30, which expressly exempts from any penalty a licensed person who during prohibited hours entertains his private friend *bond fide* at his own expense. It will thus be a delicate inquiry in such cases for the justices to discriminate between sham friendships and real intimacy, or lawful business. A "private friend" is a somewhat vague phrase, but justices may, from the explanations, easily ascertain its meaning in each case. Not only private friends, however, but persons having other lawful business on the premises would also be exempt, however difficult it may be to describe the conditions of their being lawfully there. If, for example, people have been frequenting the house, and paying for their liquor in an ordinary way, and being about to leave on the closing hour coming, the licensed person says he will treat them as his private friends, and allows them to remain later, this will usually be treated as a mere device, and the host will be held liable to the penalty: *Corbett v. Haigh*, 5 C. P. D. 50; 42 L. T. (N.S.) 185; 39 J. P. 39; 28 W. R. 430. The mere fact of persons being private friends, and lawfully on the premises during closing hours, does not entitle the landlord to allow them to carry on gaming: *Osborne v. Osborne*, 34 L. T. (N.S.) 294; *Osborne v. Hare*, 40 J. P. 759; *Osborne v. Osborne*, 34 L. T. (N.S.) 347; 40 J. P. 759; nor to play billiards: *Ovenden v. Raymond*, 40 J. P. 727.

Another instance of no penalty being incurred will occur in the case of tobacconists' shops, where customers after closing hours are *bond fide* purchasing other articles, as tea, sugar, cigars, &c. A licensed person is not prohibited from selling. See *Allen v. Heighes*, 1 Q. B. D. 330; 40 J. P. 661; 45 L. J. M. C. 34; 34 L. T. 242; 24 W. R. 58; *Ex parte Joynt*, 38 J. P. 390. See notes to section 69.

And this section obviously cannot apply to persons at or near a railway station refreshment room, which need not at any time be licensed, if there are persons arriving at or departing from the station by the railroad. See Act, 1874, section 10, *post*, and notes.

[*Constable demanding visitor's address.*] The visitor found on the premises during prohibited hours is bound to give his name and address, on request, to a constable; but he is not bound to give it to any other person. As to the constable requiring evidence of the correctness of the name and address given, it is difficult to define what this means. The person asked cannot be expected to do more than assert his correct name and residence; at the same time, if the name and address given

Sect. 25. turn out to be false, the constable, acting at his peril, will be liable to justify the apprehension, if made. The more prudent course for the constable will be to proceed against the visitor if the name and address be refused or is false, and not apprehend on the latter ground, namely, "giving false evidence with respect to name or address," which must be a very vague and uncertain ground to proceed upon, so far as he is concerned, and will require great judgment to work out within the limits of the law.

NOTE.

The offence committed under the third paragraph seems distinct from that under the first paragraph, and they are cumulative. In order to establish the offence, a previous request by the constable must be proved; and in all cases the reasonableness and truth of the information given will be important.

No power is given to the constable to turn out the visitor from the premises, or detain him till inquiries are made; and though he may, in the circumstances stated, apprehend the visitor and carry him before a justice, this will be at the risk of the constable.

Found on unlicensed premises.] There is also a penalty imposed on persons found on unlicensed premises, or where liquor is found for unlawful sale. See Act, 1874, section 1, *post*.

False representations by travellers.] The penalty on persons falsely representing themselves to be travellers or lodgers, and attempting to buy liquor, is new, but was needed in order to prevent the easy evasion of the enactment. The false representation must be made to the licensed person, or his servant or manager, and it is immaterial whether the attempt to get liquor was successful. It may be doubted whether the "traveller" here mentioned includes a "person arriving at or departing from a railway station by railroad," as described in Act, 1874, section 10, *post*. If the pretended traveller does not ask for liquor, the last clause of the section does not touch him.

26. Exemption from closing by order of local authority in respect of certain trades.] The local authority of any licensing district, upon the production of such evidence as such authority may deem sufficient to show that it is necessary or desirable so to do for the accommodation of any considerable number of persons attending any public market, or

g any lawful trade or calling, may grant, if Sect. 26.
 uthority think fit, to any licensed victualler
 sed keeper of a refreshment house [or any
 licensed to sell beer or cider by retail to be
 ed upon the premises], in respect of premises in
 ediate neighbourhood of such market, or of the
 here the persons follow such lawful trade or
 an order exempting such person from the pro-
 of this Act with respect to the closing of his
 s on such days and during such time, except
 the hours of one and two of the clock in the
 y, as may be specified in such order.

holder of an order under this section shall not
 e to any penalty for not closing his premises on
 ys and during such time as may be specified in
 ler ; but he shall not be exempt from any other
 under this or any other Act, or otherwise.

tice in such form as may be prescribed by the
 thority, stating the days and hours during which
 aises are permitted to be open under such order
 option shall be affixed and kept affixed in a con-
 s position outside the premises ; and if the
 f the order of exemption make default in affixing
 eping affixed such notice in manner aforesaid
 ny part of the time for which his exemption is
 he shall be liable to pay a penalty not exceeding
 nds.

r person who keeps affixed to his premises any
 ice when he does not hold an order under this
 shall be liable to a penalty not exceeding ten

uch local authority as aforesaid may at any time,
 n fit to them, withdraw an order under this

Sect. 26. section, or alter the same by way of extension or restriction, as such authority may deem necessary or expedient; so, however, as not to render any person liable to any penalty for anything done under such order before the holder was informed of such withdrawal or alteration.

The following persons and bodies of persons shall be deemed to be local authorities of licensing districts for the purposes of this Act, that is to say,—

- (1) In the metropolitan police district, the commissioner of police for the metropolis, subject to the approbation of one of Her Majesty's principal Secretaries of State :
- (2) In the city of London and the liberties thereof so far as they are not included in the metropolitan police district, the commissioner of city police, subject to the approbation of the Lord Mayor of the said city :
- (3) In any other place, two justices of the peace in petty sessions assembled.

The words *in brackets* were inserted by the Licensing Act, 1874, sections 4, 5.

The exemption order.] This section contemplates the granting of a permanent exemption order, intended to last some months, or it may be years, or indefinitely, without any period specified. The object is to confer this exemption on certain houses, so as to allow them to be open during part of the prohibited hours, without incurring the usual penalty. The hours of exemption must be specified in the order of the local authority. The power of exemption is conferred not only as to licensed victualling houses, that is, alehouses licensed under 9 Geo. 4, c. 61, and refreshment houses licensed under 23 Vict. c. 27, but also on houses licensed for beer and cider to be consumed on the premises. Out-door licensed houses are not entitled to this exemption order. The premises must be in the "immediate neighbourhood" of the market or place where the

follow their trade or calling. The commissioner or just to decide what is a considerable number of persons, and the immediate neighbourhood; probably all that is meant the premises be near and convenient, though the local authority is not restricted to select the nearest house, nor to limit it to a single house. Though all persons attending a theatre included in the original enactment, but are now excluded by the Licensing Act, 1874, section 4, still the persons following the trade of servants, attendants, or actors at a theatre will come under the words.

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NOTE.

[*Local authority.*] It is entirely discretionary in the local authority to grant this exemption order, though all the conditions are to be fulfilled. It is also to be obtainable without notice, so that no one of the public would have no right to be heard or to object to the granting or altering of such order. And for a like reason no appeal seems to be given against the refusal, at least to the commissioners of police.

The local authority is not bound to follow any rules of evidence in the subject, but the order should recite the ground on which the exemption is conferred—for example, in respect of what trade, or calling the exemption is given, and should state the person exempted is a licensed victualler, or refreshment-house keeper, or licensed beerhouse keeper, and the precise days and hours of the exemption.

[*By a notice up.*] To keep affixed on the premises a notice implies the duty to renew the notice.

The license holder should apply to the local authority to define the terms of the notice to be affixed.

The fifth paragraph makes the order revocable at will by the local authority, and no reason need be given for the withdrawal, and the particular mode of giving notice of the withdrawal is not specified. It may be, however, assumed that the order will be withdrawn in the same way as it was made, with the addition of the notice of withdrawal on the party holding the order. The order should not specify any period during which it shall be in force, since it can be revoked at any time, and the order will cease at the end of the licensing year, unless the license continues to hold the license.

The holder of this exemption order is liable to a penalty for not complying with it on a lawful demand: section 64, *post*.

Occasional exemption orders intended to last only for a few days or two days at a time, see *post*, section 29, and notes.

Sect. 26. As to occasional licenses authorising a sale of licensed premises in places than the licensed premises, see *post*, 25 & 26 Vict. c. 33, s. 13; 26 & 27 Vict. c. 33, s. 20; 27 & 28 Vict. c. 18, s. 13.

NOTE.

27. *Intoxicating liquors not to be sold in refreshment house during the hours when the house would be closed if it were an inn.* Any person licensed to sell intoxicating liquor shall be consumed upon the premises licensed as a refreshment house, but not for the sale of any intoxicating liquor, during the hours in which the same premises would, if they were licensed premises of licensed victuallers, be lawfully licensed for the sale and consumption of intoxicating liquor.

If any person, licensed to keep such refreshment house, allows any intoxicating liquor to be sold on the premises in contravention of this section, shall be liable for the first offence to a penalty not exceeding five pounds, and for any subsequent offence to a penalty not exceeding twenty pounds.

This section is confined to refreshment houses not licensed for the sale of intoxicating liquors. These houses are defined by the Acts 23 Vict. c. 27, and 24 & 25 Vict. c. 91, s. 8; 25 & 26 Vict. c. 64; 28 & 29 Vict. c. 77, *post*. See also Licensing Act, section 11, as to night houses.

As to what is a refreshment house, see 23 Vict. c. 27, s. 1, *notes, post*.

The penalty can only refer to liquor which had been supplied by a guest to be consumed during the ordinary prohibitory hours.

28. *Amendment of law as to refreshment houses.* Every refreshment house in respect of which a license is granted for the sale therein by retail of wine, upon which license an abatement of duty is allowed under 24 & 25 Vict. c. 91, s. 9 (*post*), shall be closed every night at ten o'clock after sunset.

back; and if any person keeping any such refreshment house as is mentioned in this section sells or exposes for sale in such refreshment house, or opens or keeps open any such refreshment house for the sale of intoxicating liquor during the time that such house is directed to be closed by this section, or during such time as aforesaid allows any intoxicating liquor to be consumed on such premises, he shall for the first offence be liable to a penalty not exceeding ten pounds, and for any subsequent offence to a penalty not exceeding twenty pounds. Sect. 28.

[Any conviction for an offence against this section shall be recorded on the license of the person convicted, unless the convicting magistrate or justices shall otherwise direct.]

This section applies only to refreshment houses selling by retail foreign wine, for which abatements for license duty are obtained on the condition of the house not being kept open after 10 P.M. : 4 & 25 Vict. c. 91, s. 9.

The part *within brackets* was repealed by Licensing Act, 1874, section 33; but see that Act, section 13. The justices may record the conviction on the license.

Part of the original section has been left out, being repealed by 6 & 47 Vict. c. 39, sched.

29. *Local authority may grant occasional licenses exempting from provisions relating to closing during certain hours.* [If any licensed victualler or keeper of a refreshment house in which intoxicating liquors are sold [or any person licensed to sell beer or cider by retail to be consumed on the premises], applies to the local authority of a licensing district for a license exempting him from the provisions of this Act relating to closing of premises on any special occasion or occasions, it shall be lawful for such local

Sect. 29. authority, if in his discretion he thinks fit :
 to grant to the applicant an occasional license exempting him from the provisions of this Act to closing of premises during certain hours, the special occasion or occasions to be specified in the license; and no licensed victualler or keeper of a refreshment house [or person licensed to sell beer to be consumed on the premises] to whom an occasional license has been granted under this section subject to any penalty for the contravention of the provisions of this Act relating to the closing of premises during the time to which his occasional license relates but he shall not be exempted by such occasions from any penalty to which he may be subject under any other provision of this or any other Act of Parliament.

The words *within brackets* were inserted by the Licensing Act, 1874, section 5.

As to who is the *local authority* of a licensing district, see 26 and notes, *ante*, p. 52.

The holder of this occasional exemption order is bound to produce it on a lawful demand: section 64, 1874.

An occasional license to sell liquors at *places other than licensed premises* was authorised by 25 & 26 Vict. c. 22, 26 & 27 Vict. c. 33, ss. 19, 20, 21; 27 & 28 Vict. c. 18, see Licensing Act, 1874, sections 18, 19, 20.

Special occasion.] The nature of the "special occasion" is left to the local authority, and the usual occasion is a festival or entertainment, as to which the discretion of the local authority seems unlimited and without appeal. The Excise authorities accordingly will not interfere, even though justices try to prevent a special occasion on Christmas Eve and New Year's Eve as special occasions: *Keeling*, 50 J. P. 551; 34 W. R. 718. The application for a license keeping open the licensed premises during some particular ordinary prohibited hours on account of the local festival as a fair, race, ball, &c. It is to be noticed that the license extends only to "the provisions of this Act relating to the closing of premises during certain hours," which are now the provisions of the Licensing Act, 1874, section 2. And the license can be granted to houses for in-door consumption.

By 38 & 39 Vict. c. 21, s. 1, the holder of an occasional

his 29th section shall not be liable under the Act 26 Geo. 2, Sect. 29.
the Music and Dancing Licenses Act for London and West-
and 20 miles round), *ante*, p. 30, to any penalty for being
from midnight to the hour for closing specified in the occa-
license.

NOTE.

Repeated Convictions.

1. *Forfeiture of license on repeated con-
victions.*] If any licensed person on whose license two
convictions for offences committed by him against this
Act have been recorded, is convicted of any offence
which is directed by this Act to be recorded on his
license, the following consequences shall ensue ; that is

—
The license of such licensed person shall be for-
feited, and he shall be disqualified for a term
of five years from the date of such third con-
viction from holding any license ; and

The premises in respect of which his license was
granted shall, unless the court having cogni-
zance of the case in its discretion thinks fit
otherwise to order, be disqualified from receiv-
ing any license for a term of two years from
the date of such third conviction.

It is provided that nothing in this section contained shall
prevent the infliction by the court of any pecuniary
penalty or any term of imprisonment to which such
person would otherwise be liable, or shall pre-
vent the court from exercising any power given by any
section of this Act of disqualifying such licensed
person or such premises for a longer period than the
period mentioned in this section.

"licensed person" does not include a mere refreshment-
house-keeper: section 74, *post*.

Convictions here mentioned must be convictions for offences
committed by the same person against and therefore subsequent
to the Act, though they need not be of the same description.

Sect. 30. There is no limit of time specified between the three convictions but by the next section (section 31) a partial limit is defined for some purposes. And by section 32 no conviction is to count for some purposes after the lapse of five years from its date.

NOTE.

The previous conviction may be proved by a certified extract from the register kept by the clerk of the convicting justices: & 43 Vict. c. 49, s. 22; or in some cases from the register of licences under section 58. See also 34 & 35 Vict. c. 112, s. 18.

The effect of a forfeiture of a license is, that from the date of conviction the house ceases for all purposes to be licensed, and no person can thereafter apply during the current licensing year either for a transfer or a renewal: *R. v. West Riding JJ.*, 52 J. 455; 21 Q. B. D. 258; 57 L. J. M. C. 103; 36 W. R. 258.

The words "which is directed by this Act to be recorded on his license" are interpreted by the Licensing Act, 1874, section 13, to mean "which is directed by the justices to be recorded on the license," and thus an ambiguity under the original Act, 1872, is avoided. But those convictions recorded by compulsion of law since the Act, 1872, and before the Act, 1874, will remain in force.

The justices seem to have no power to alter the period of disqualification of the person from five years or of the premises from two years to shorter periods respectively. But they may by order prevent the disqualification of premises altogether. A license or certificate becomes void when the disqualification takes effect: section 44, and see section 63, *post*.

The effect of a person being disqualified for five years seems to be that any license granted or transferred to him by inadvertence during that period would be void. But after the lapse of five years, he might obtain a transfer, like other persons.

Where a conviction is such that if repeated the premises would be liable to be disqualified, the clerk of the licensing justices is to serve notice thereof on the owner. See section 56, *post*.

31. Disqualification of premises.] The following additional provisions shall be enacted with respect only to convictions of persons who may hereafter be licensed in respect of the premises, and shall not apply to a conviction of any person licensed for any premises at the passing of this Act so long as he is licensed in respect of the same premises; viz.—

- (1) The second and every subsequent conviction recorded on the license of any one such person shall also be recorded in the register of licenses against the premises:

When four convictions (whether of the same or of different licensed persons) have within five years been so recorded against premises, those premises shall during one year be disqualified for the purposes of this Act : Sect. 31.

[If the licenses of two such persons licensed in respect of the same premises are forfeited within any period of two years, the premises shall be disqualified for one year from the date of the last forfeiture :

and that where any premises are disqualified by this section notice of such disqualification shall be served upon the owner of the premises in like manner as an order of disqualification is required to be served under this Act, and the regulations for the protection of premises in case of an order of disqualification, so far as the same are applicable, extend to premises so disqualified under this section.

This section only applies to persons who had no license or certificate on the 10th August, 1872, in respect of the same premises. Those who had such license or certificate will continue to be exempt from the section so long only as they continue to be licensed for the same premises.

It should be borne in mind that no conviction can be recorded on premises except where directed to be recorded by the justices, who always have a discretion on that matter. See Act 1874, s. 1.

The second recorded conviction only that is to be the first against the premises in the register.

If no consequence, under sub-section (2), whether the successive convictions be for the same offence or by the same person. If the convictions have been recorded against the successive occupiers of the same premises within five years (which is against the premises), the premises shall by operation of law become disqualified for one year. So, under sub-section (3), if the licenses of two successive tenants are forfeited, the same disqualification will attach by operation of law to persons who purchase licensed houses will thus, besides

- Sect. 31.** requiring the usual legal title, require to search the re-
NOTE. licenses to discover the moral character of "the premises."

Disqualification during one year.] The effect of being disqualified for one year will be that if by inadvertent justices should renew the license it would be void. Another would be as to in-door beerhouses licensed since 1869, justices in future would not be bound by the four ground 32 & 33 Vict. c. 27, s. 19, *post*. Under sub-section (2), and sub-section (3), the one year will count from the date of conviction.

As to the consequences to the owner, see section 56.

As to the effect of Licensing Act, 1874, section 13, recording a conviction, see notes to that section.

The proceedings as to serving orders of disqualification stated in section 56.

The notice to the owner can only be served personally by post, by registered letter, see section 70, *post*.

32. *Conviction after five years not to increase penalty.*] A conviction for any offence under this Act shall not after five years from the date of such conviction be receivable in evidence against any person for the purpose of subjecting him to an increased penalty or to any forfeiture.

The conviction under this Act after five years loses its legal force, and is to be deemed non-existent, but only for the purpose of increasing the penalty or causing forfeiture. It may have been doubted whether, if the words "or to any forfeiture" had not been added, the word "penalty" would not have been to be used in the popular sense, and to include such consequences as forfeiture of license, and disqualification of person and premises, but owing to the last four words that view is untenable. According to the literal and technical meaning of the word "penalty" applies only to a sum of money, and does not include imprisonment, forfeiture, disqualification, and other consequences of a conviction. As the word is obviously used not to include forfeiture, it seems to follow that so far as the consequences described by section 30, the convictions will count, though they are more than five years old, for the purpose of disqualification of person and premises. And of course they may operate seriously against all persons applying for a license.

grants of licenses. This section, therefore, practically does apply to disqualification, subject to the express restrictions on that head in section 31. **Sect. 32,**
NOTE.

33. *Omission to record conviction on license.*] Where a conviction for an offence is by this Act directed to be recorded on the license of any person, the fact of such record having been made shall not, if such conviction be otherwise proved to the satisfaction of the Court having cognizance of any case under this Act, exempt such person or the premises occupied by him from any penalty to which such person or premises could have been subject if such record had been duly made. And on such proof being given the omitted conviction may be recorded accordingly, and shall be deemed to have been duly recorded in accordance with this Act.

This section practically makes the provision as to recording convictions on a license, one which executes itself, and the omission is of little consequence since it can be cured at any time. The Licensing Act, 1874, section 13, makes this apply to all cases in which a license was formerly recorded by operation of the Act instead of by the express order of justices. The recording of convictions is provided for in section 55, *post*. Though the not recording of a conviction is not allowed to be relied upon by the person convicted, still it may be an important matter to the owner of the premises, or at least to the purchaser of such property in future, to be able to search the register, so as to ascertain the state of the premises, and the risk of disqualification.

34. *Penalty for defacing record of conviction on license.*] If any person defaces or obliterates, or attempts to deface or obliterate, any record of a conviction on his license, he shall be liable to a penalty not exceeding five pounds,

As the practice will be in future to renew a license or certificate of endorsement under section 48, this section may be of use. But

Sect. 34. the register of licenses (sect. 36) will probably be found any attempt to deface a record of conviction nugatory. A person summoned must produce his license under section 36. The justices cannot order this conviction to be recorded on the license.

NOTE.

35. *Entry on premises by constable.*] by Licensing Act, 1874, section 33. See 1874, s. 16).

Registers.

36. *Register of licenses to be kept in district.*] There shall be kept in every licensing district by the clerk of the licensing justices of the peace a register to be called the register of licenses in the form as may be prescribed by such justices, containing the particulars of all licenses granted in the district, the premises in respect of which they were granted, the names of the owners of such premises, and the names of the holders for the time being of such licenses. There shall also be entered on the register all forfeitures of licenses, disqualifications of premises, records of convictions, and other matters relating to the licensing register.

Every person applying for a new license or the renewal of a license, shall state the name of the owner of the premises in respect of which such license is granted or renewed, and such name shall be entered on the license, and the person whose name is so entered shall, subject as hereinafter mentioned, be deemed for the purposes of this Act to be the owner of the premises.

A court of summary jurisdiction may, on the conviction of any person who proves to the court that he is not the owner of any premises, order that his name be entered as owner of any premises in the register.

ce of the person appearing on the register to be the **Sect. 36.**
ner, make an order substituting the name of the
licant, and such order shall be obeyed by the clerk
the licensing justices, and a corresponding correction
y be directed to be made on the license granted in
pect of the premises of which such applicant claims
be the owner.

Any ratepayer, any owner of premises to which a
ense is attached, and any holder of a license within
licensing district, shall upon payment of a fee of one
lling, and any officer of police, and any officer of
and Revenue in such district, without payment, shall
entitled at any reasonable time to inspect and take
ies of or extracts from any register kept in pursuance
this section for such district; and the clerk of the
nsing justices and every other person who prevents
inspection or taking copies of or extracts from the
e, or demands any unauthorised fee therefor, shall
liable to a penalty not exceeding five pounds for
h offence.

The licensing justices may, if they think fit, cause
a register kept in pursuance of this section to be
ided into parts, and assign a part to any portion of
a licensing district; and there shall be paid by each
nsed person to the clerk in respect of such registra-
the sum or fee of one shilling for every license
ted or renewed.

This register is a convenient mode of enabling the owners and
changers of premises to ascertain the position of their tenant in
pect of misconduct, since disqualification of premises may
ow on almost every kind of offence, if repeated. If there are
e than one person who is clerk of the licensing justices, the
ices shall determine which of them is to keep this register; see
section 74. As to using the register as evidence, see sec-
58, *post*.

Sect. 36. The words "records of convictions" in the first paragraph not mean "records of convictions ordered to be recorded on a license," but records of convictions of any holder of the ~~premises~~ for the time being, whether ordered to be recorded on the ~~list~~ or not; see section 55, *post*. In this register also must be ~~enter~~ any conviction for bribery or treating, or any report respecting a licensed person: 46 & 47 Vict. c. 51, s. 38.

NOTE.

For definition of *owner*, see section 74, *post*, and Licensing Act, 1874, section 29. By the Licensing Act, 1874, section 29, owner may demand to have his name put on the register. But justices should substitute the name of the applicant for the name of the person entered, notice should be given to the latter that he might show cause and oppose the change; and either may apply under section 52, *post*.

The right to demand inspection of the register is confined to ratepayers, owners of licensed premises, license holders in the district, constables, and Inland Revenue officers.

The fee of one shilling is in addition to the fees payable on grants of licenses and certificates as well as transfers, as to which see 9 Geo. 4, c. 61, s. 15; 33 & 34 Vict. c. 29, s. 4, sub-section 4. And this fee is payable on renewals as well as new grants.

Amendment of Law as to Grant of Licenses.

37. *Licensing committee of justices in counties.]* In counties a grant of a *new license* shall not be valid unless it is confirmed by a standing committee of the county justices, in this Act called the *county licensing committee*.

The justices in quarter sessions assembled for each county shall annually appoint from among themselves for the purposes of this Act a *county licensing committee* or they may appoint more than one such committee and assign to any such committee such area of jurisdiction as they may think expedient.

A county licensing committee shall consist of not more than three or more than twelve members.

The quorum of a county licensing committee shall be three members.

vacancies arising in any such committee from Sect. 37. resignation, or other causes, may be from time to time filled up by the justices in quarter sessions by whom the committee is appointed.

County licensing committee shall be deemed to be a standing committee of the quarter sessions by whom they are appointed for the year succeeding their appointment, and their jurisdiction and proceedings shall not be affected by the termination of the sessions at which they were appointed. The members of a committee retiring at the end of the year may be re-appointed; and if from any cause members have not been appointed in any year to succeed the retiring members, such retiring members may continue to act as a committee until their successors are appointed.

The justices in quarter sessions shall make such regulations with respect to the meetings of any such committee and the transaction of business thereat as they may think fit.

The clerk of the peace of the county shall, by himself or deputy, be the clerk of the county licensing committee or committees, and shall perform all such duties in relation to any such committee or committees as he may be required by law to perform in relation to the justices in quarter sessions assembled.

The rest *repealed* by 46 & 47 Vict. c. 39, Sched.)

Confirmation of a new certificate for houses licensed for sale off the premises is now required: Licensing Act, section 24.

retion of confirming authority.] The confirming authorities have the same discretion which the licensing justices formerly had, neither more nor less; and now in all cases that require their discretion is absolute. They need give no reason, and there is no appeal against their decision: *Re An-*

Sect. 37. *nandale JJ.*, 37 J. P. 85; *R. v. Middlesex JJ.*, 42 J. P. They are bound, like the licensing justices, to hear all objections, such as that there are too many licensed houses, the annual value of premises is insufficient, that the applicant is of bad character, &c. The only qualification is that the licensing authority is not bound to hear any party who did not appear before the licensing justices. See *post*, section 43. The licensing authority does not stand towards the licensing justices in the position of a court of appeal; they are merely to go over the ground, and to exercise their independent judgment on the facts, materials, or such materials as the applying and objecting parties place before them. They cannot reverse.

NOTE.

The origin of the power of justices to grant a new license as well as a renewal of a license, is found in 9 Geo. 4, c. 61, s. 1. This 37th section deals with new licenses only so far as the functions of the licensing committee in counties as the confirming authority are concerned. Transfers of licenses come before the general body of justices (including those who are members of the licensing committee) who sit at transfer sessions, which are appointed under 9 Geo. 4, c. 61, s. 4, and require no confirmation. As regards renewals of current licenses, all the justices take part in these, as well as those who form the licensing committee, and no confirmation is necessary.

Grant of new licenses.] The grant of a new license or certificate is still to be made as before this Act in counties by the justices at the general annual licensing meeting, but the grant will not be valid until confirmed by the county licensing committee. As to the general duties and powers of justices at grants, see 9 Geo. 4, c. 61, s. 1, *post*, and notes.

A *mandamus* will lie to the justices in quarter sessions to appoint a county licensing committee.

There is, as already stated, no appeal to quarter sessions against the refusal of a new grant of a license or certificate. See the 1st schedule, which repealed 9 Geo. 4, c. 61, s. 27, as to new licenses. See also Licensing Act, 1874, section 27, to the same effect, in cases of wine and beerhouse certificates.

Object of confirming authority.] The confirmation by the licensing committee is a sufficient check on new grants, and if the first body of justices refuse the application for a new grant, their decision is now final so far as quarter sessions are concerned. An appeal to quarter sessions, however, remains as regards applications for renewals or transfers of licenses or certificates. The second body of justices can, moreover, only refuse applications for certificates for out-door wine, spirit, sweets, and cider licenses under

e and Beerhouse Acts for certain reasons. See 32 & 33 Vict. **Sect. 37.**
, s. 8, *post*, and notes, and this Act, sections 69, 74.

he applicants, therefore, for new licenses or certificates for
oor consumption cannot obtain an excise license under 9
. 4, c. 61, s. 17, and 32 & 33 Vict. c. 27, s. 4, until they have
only obtained the justices' license, but also the committee's
firmation of the license ; while no confirmation is needed for
door licenses.

NOTE.

Procedure before confirming authority.] The mode of ob-
ing confirmation of a new license by the committee is regu-
d by section 43, and is subject to regulations to be made as to
proceedings by the justices in quarter sessions. See also Act,
4, section 25. These regulations must be consulted in each
nty as to what is required to be done by the applicants, and
clerk of the peace will give such information.

The fee payable to the clerk of the justices in respect of a new
nce remains the same as before. See 9 Geo. 4, c. 61, s. 15.
to certificates under the Wine and Beerhouse Acts, the same
is also due: 32 & 33 Vict. c. 27, s. 8.

Notices before new grants.] The notices by applicants for
licenses are regulated by 32 & 33 Vict. c. 27, s. 7, which was
ended to all cases by Licensing Act, 1872, section 40.

**38. Licensing committee of justices in
oughs.**] In boroughs in which, at the commence-
nt of the time appointed for the annual appointment
a licensing committee in this section mentioned,
re are ten justices acting in and for such borough or
wards, new licenses shall be granted by a committee,
shall, for the purpose of such new licenses, perform
the duties and be subject to the obligations of
nsing justices.

n every such borough as aforesaid the justices,
ing in and for such borough, shall annually in the
night preceding the commencement of the period
ing which the general annual licensing meeting for
h borough may be held, appoint from among them-
res for the purposes of this Act a committee of not

Sect. 38. less than three nor more than seven in number, but justice shall be appointed a member of such committee unless he is qualified to act under this Act.

Any vacancies arising in such committee (in this referred to as the borough licensing committee) by death, resignation, or other causes, may be from time to time filled up by the justices by whom the committee was appointed.

The quorum of a borough licensing committee shall be three members.

The members of the borough licensing committee retiring at the end of the year may be re-appointed and if from any cause members have not been appointed in any year to succeed the retiring members such retiring members may continue to act as members of the borough licensing committee until their successors are appointed.

The grant of a new license by a borough licensing committee shall not be valid unless it is confirmed by the whole body of borough justices, who would, if the Act had not passed, have been authorised to grant licenses, or by a majority of such body present at a meeting assembled for the purpose of confirming licenses.

In boroughs in which there are not ten justices acting in and for such borough at such time as aforesaid, licenses shall be granted by the qualified borough justices, but the grant of a new license by such justices shall not be valid unless it is confirmed by a joint committee appointed in respect of such borough in manner hereinafter mentioned :

A joint committee for any such borough as last aforesaid shall consist of three justices of the county

in such borough is situate, and three justices of the borough [or if there are not three such borough justices, then the deficiency is to be supplied by county justices, to be appointed by the county licensing committee], but no justice shall be appointed a member of such committee unless he is qualified to act under this Act. The three county justices on a joint committee shall be appointed by county licensing committee. The same county justices may be appointed members of more than one joint committee under this section. The borough justices on a joint committee shall be appointed by the justices of the borough for which they act, or the majority of such justices assembled at any meeting held for that purpose. Any casual vacancy occurring in the joint committee from death, resignation, or other cause, may from time to time be filled up by the justices by whom the person filling such vacancy was appointed. The quorum of the joint committee shall be five members. The mayor or magistrate on the joint committee present at any meeting shall be its chairman; and in the event of an equal division of the committee the chairman shall have a second vote:

which here was *repealed* by 46 & 47 Vict. c. 39,

no objection shall be made to any licenses granted or refused in pursuance of this section on the ground that the justices or committee of justices who granted or refused the same were not qualified to make such confirmation.

and after the passing of this Act, the justices of the peace shall not for licensing purposes, save in so far

Sect. 38. as respects the power of appointing members of a joint committee, have any jurisdiction in a borough in which the borough justices have for such purposes concurrent jurisdiction.

The words *within brackets* were inserted by Licensing Act, 1872, section 21.

No grant of a new certificate to sell liquors not to be consumed on the premises requires any confirmation : Licensing Act, 1872, section 24.

The powers of licensing committees.] This section makes the important distinction as regards boroughs with ten justices that the whole body of justices cannot exercise the power to grant a new license, the committee being substituted for the whole body in respect to that matter. There being, however, nothing said as to transfers and renewals, the whole body of justices must deal with these as before.

Boroughs having a separate commission of the peace are divided into those which have ten justices acting for the borough and those which have less. The word "borough" is defined in section 74, *post*.

In the former case, the grants of new licenses and certificates are to be made by the borough licensing committee, and confirmed by the whole body of borough justices, that is to say, by the majority of those who attend a meeting for the purpose of confirming such licenses or certificates. The "commencement of the time appointed for the annual appointment of a licensing committee" is "the fortnight preceding the commencement of the period during which the general annual licensing meeting may be held for the borough." Therefore, in the country, this is the fortnight before the 20th of August, and in Middlesex and Surrey before the 1st March, and at the commencement of such fortnight, if ten justices exist, the licensing committee is to be appointed.

In boroughs which have less than ten acting justices, the grant of new licenses or certificates is to be made by the borough justices, and confirmed by a joint committee of three county justices and three borough justices, and if the borough justices are deficient, then by county justices, as stated above.

A justice who is a brewer, &c., will count as one of the ten, though he is disqualified by section 60, *post*, from acting in most cases.

As to fees, see notes to last section.

jurisdiction of justices in boroughs, see also notes to Sect. 38.
 c. 61, s. 1, *post*.
 important to notice that a license cannot be objected to for
 lification of the justices. NOTE.

*Stipendiary magistrates may act as
 ing justices.*] Beyond the limits of the juris-
 of the metropolitan police courts a metropolitan
 or stipendiary magistrate may act as one of the
 empowered to grant or confirm licenses so far as
 any licensing district wholly or partly within
 sdiction.

removes partly a disqualification in 2 & 3 Vict. c. 71, s. 14,
 & 22 Vict. c. 73, s. 7. The word "grant" is obviously
 its popular sense, so as to include transfers and renewals
 rely. See as to some metropolitan magistrates indorsing
 under 5 & 6 Vict. c. 44, s. 1, *post*.

*Regulations as to new licenses and
 er of licenses.*] Every person intending to
 for a new license, or to apply for the transfer of a
 shall publish notice of such application as
 ; that is to say,—

In the case of a *new license*, he shall cause
 notice thereof to be given and to be affixed
 and maintained in manner directed by section
 seven of "The Wine and Beerhouse Act,
 1869," and any enactment amending the
 same, and shall advertise such notice in some
 paper circulating in the place in which the
 premises to which the notice relates are
 situate, on some day not more than four and
 not less than two weeks before the proposed
 application, and on such day or days (if any)
 as may be from time to time fixed by the
 licensing justices :

Sect. 40.

(2) In the case of the *transfer of a license* he shall fourteen days prior to one of the special sessions appointed by the justices for granting transfers of such licenses, serve a notice of intention to transfer the same upon one of the overseers of the parish, township, or place in which the premises in respect of which application is to be made are situate, and the superintendent of police of the district. This notice shall be signed by the applicant or by his authorised agent, and shall set forth the name of the person to whom it is intended that such license shall be transferred, together with the place of his residence, and his trade or calling during the six months preceding the time of serving such notice :

(3) Any license may be *authenticated* in manner in which a certificate may be authenticated in pursuance of sub-section two of section forty of "The Wine and Beerhouse Act Amendment Act, 1870," and the provisions of the said section shall apply accordingly :

[Part here *repealed* by 46 & 47 Vict. c. 39, Sched.]

The provisions of this section as to notices shall extend to all cases where, under the Intoxicating Liquors Act, 1828, notices are required to be served in a like form or in the same manner as notices for new licenses.

Notices before new licenses.] As to the meaning of "new license," see definition in section 74, *post*, and notes thereon ; see Licensing Act, 1874, s. 32, *post*. The notice before application for a new license was regulated by 9 Geo. 4, c. 61, s. 10, *post*. This section is now repealed and superseded by the corresponding section in the Wine and Beerhouse Act, 32 & 33 Vict. c. 27, s. 1 *post*. Besides complying with the last-mentioned section, the appli

st advertise his notice as above in a local newspaper. He Sect. 40.
 erty to select his newspaper if there are several circulating
 lace; but the justices may fix the days on which the
 ament shall appear, as to which the clerk of the licensing
 will give information to applicants. They will be guided
 lays of publication of the appropriate newspaper. There
 ecise form given by any of the statutes for a notice, but it
 ste in substance the name of the applicant, describe his
 residence, house for which the license is asked, the kind of
 plied for, and the time of the general annual meeting or
 ment at which the application is to be made. It is for the
 to decide whether the notices have been given pursuant
 atutes, and as the giving of notices is a condition precedent
 isdiction to grant licenses, questions may arise as to the
 of licenses granted in contravention of the statutory
 : *Ormerod v. Chadwick*, 2 N. Sess. 697; 16 M. & W. 367;
 e *James*, 12 J. P. 262. The justices were held to have
 decided that service of notice on the superintendent of
 as bad where the service was at one of the police offices of
 ict, and not at his own residence: *R. v. Riley*, 53 J. P. 452.
 e is not bad for describing the license as one to sell beer,
 the justices can only grant a license which authorises the
 o grant such a license: *R. v. Blackburn JJ.*, 42 J. P. 775.
 . (N.S.) 444. And see further as to notices, 32 & 33 Vict.
 7, and notes, *post*.

NOTE.

latter enactment as to a newspaper advertisement, which is
 ll apply to certificates under the Wine and Beerhouse Acts,
 as to alehouse licenses. The notice for a new alehouse
 is now, therefore, identical with that for a new certificate
 he Wine and Beerhouse Acts.

ces before transfer.] The notice previous to the applica-
 a transfer of license was regulated by 9 Geo. 4, c. 61, s. 11,
 s repealed, and the provision in clause (2) of this section is
 ted. It increases the length of the notice. There is
 o at the end of 9 Geo. 4, c. 68, s. 14, which is not repealed.
 rds at the end of this 40th section say, however, that this
 shall apply to all cases in that proviso, which required
 like those for a new license. Hence, in those few cases of
 s the same notice is to be given as is prescribed by this
 tion for a new license.

section will apply also to transfers of certificates under the
 nd Beerhouse Act, 33 & 34 Vict. c. 29, s. 4, sub-section 5,

the mode of *authenticating* the license or certificate, see

Sect. 40. 33 & 34 Vict. c. 29, s. 4, and notes, *post*. The form of certificate is regulated by the Secretary of State. See NOTE. and the official forms at the end of this volume.

As to the mode of *computing* the days, see notes to 35 c. 27, s. 7, *post*. The words "14 days prior" to trans seem to mean "14 clear days;" if so, then the day of not day of sessions are to be excluded. See further as to c. 32 & 33 Vict. c. 27, s. 7, and notes, *post*.

All these notices may be served by post; see section

As to the *discretion of justices* in granting or re licenses, the law is stated in 9 Geo. 4, c. 61, s. 1, and 32 c. 27, s. 8; 43 Vict. c. 6; 45 & 46 Vict. c. 34, *post*. A discretion of justices on applications for transfers, see c. 61, s. 14, *post*, and notes.

41. *Amendment of 5 & 6 Vict. c. . respect to licenses wilfully withheld.*] W the second section of the Act of the session o and sixth years of the reign of Her present chapter forty-four, the magistrates or justice sessions are empowered in the event of a lice lost or mislaid to receive a copy of such licen deal therewith in manner in the said section m And whereas it is expedient to extend the pow magistrates or justices to the reception of a license in the event of a license being wilfully by the holder thereof: Be it enacted, that su shall be construed as if after the words "lost or there were inserted the words "or if the app for the grant of a license [or the transfer of : has been wilfully withheld by the holder there

The words *in brackets* were inserted by 47 & 48 Vict

The provisions of 5 & 6 Vict. c. 44, ss. 2, 3, which were confined to alehouse licenses, were extended to under the Wine and Beerhouse Acts by 33 & 34 Vict the fee for endorsing a copy of a lost license being 2s. sections are now extended to the case of a license "wil held by the holder." It had been held that justice petty sessions under 5 & 6 Vict. c. 44, were not con

a copy of a license if the outgoing licensee, owing to a with his landlord, would not give up the original, as the n was held to apply only to applications for *grants* of , but not to applications for endorsement or transfer : *Ex Phillips*, 42 J. P. 279. The holder of a license is bound by 84 to produce the license to justices and constables.

not to be inferred from this section, and 5 & 6 Vict. c. 44, tices at petty sessions are incapable of granting a temporary , unless the identical piece of paper on which the current was written is produced, for now by the aid of the register es, under sections 36 and 58, justices can always ascertain tainty all the particulars of a current license, and can their power in regard to temporary transfers without the he original document, the importance of which in most trifling.

Sect. 41.

NOTE.

. Provisions as to renewal of licenses.]

a licensed person applies for the renewal of his the following provisions shall have effect :—

He need not attend in person at the general annual licensing meeting, unless he is required by the licensing justices [for some special cause personal to himself] so to attend :

The justices shall not entertain any objection to the renewal of such license, or take any evidence with respect to the renewal thereof, unless written notice of an intention to oppose the renewal of such license [and stating in general terms the grounds of opposition] has been served on such holder not less than seven days before the commencement of the general annual licensing meeting : Provided that the licensing justices may, notwithstanding that no notice has been given, on an objection being made, adjourn the granting of any license to a future day, and require the attendance of the holder of the license on such day, when the

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case will be heard and the objection considered as if the notice hereinbefore prescribed been given :

- (3) The justices shall not receive any evidence in respect to the renewal of such license which has not been given on oath.

Subject as aforesaid, licenses shall be renewed and the powers and discretion of justices relative to such renewals shall be exercised as heretofore.

The words *in brackets* were inserted by the Licensing Act, 1872, s. 26.

The Alehouse Act, 9 Geo. 4, c. 61, s. 12, *post*, authorised a justice or infirm person, &c., to apply for the grant of a license, the justice having assumed that the justices would not be likely to grant a license to a person whom they had not seen. But there was nothing in the other parts of the Act 9 Geo. 4, c. 61 to prevent them granting a license to such person if they chose.

The renewal of licenses is the same as before, subject to the provisions as to notice of opposition, and no confirmation by a licensing committee is necessary. As to how a renewal is distinguished from a new license, see section 74 and note.

No notice by applicant for renewal.] No notice required to be given by the applicant on an application to renew a certificate under the Wine and Beerhouse Act, 32 & 33 Vict. c. 27, s. 7. And there was nothing in the Alehouse Act, 9 Geo. 4, c. 61, requiring such notice as to renewal of alehouse licenses, though that section is repealed, there is no such obligation.

The justices who renew licenses.] The justices who renew the same licenses who entertain the new applications. In boroughs with ten justices, the licensing committee now, under section 38, alone exercise the jurisdiction as to new licenses. Nevertheless, there seems to be nothing expressly to prevent the whole borough justices joining in the hearing of applications for renewal, though the licensing committee in the larger boroughs sitting by themselves can alone deal with the applications for new licenses, as stated in section 38.

Burden of proof of opposition.] Though this section transfers the *onus* of proving the objection to the renewal of both licenses and certificates on the objecting party, the licensing justices have an entire discretion in most cases as to the subject-matter of the objection, subject only to an appeal on the part of the applicant.

Geo. 4, c. 61, ss. 27, 28, 29, which sections are unrepealed as regards renewal of licenses and certificates. What they have to see to is that some one has served in due time of opposition, stating grounds, seven days before the general meeting. But this objection can be overcome by the starting the objection in open court, and then adjourning the latter part of the second sub-section: *R. v. Merthyr JJ.*, 49 J. P. 213; 14 Q. B. D. 584; 54 L. J. M. C. 78; *Additch*, 50 J. P. 246; *R. v. Essex JJ.*, 46 J. P. 761. Hence this renders it no longer necessary, as was required under the old Beerhouse Acts, for the applicant for a renewal of a certificate unopposed, to give affirmative evidence of good character: *Re Morgan*, 35 J. P. 37; 23 L. T. (N.S.) 605. The burden of proof is thrown on the parties objecting to a renewal of a license or certificate. It appears that any person may oppose the renewing of a license or certificate. The evidence must now be on oath in cases where the applicant is a licensed person. And by the Licensing Act, 1874, section 26, even the justices are prohibited from requiring the applicant to attend, except for some special personal cause to the applicant. The meaning of the words "personal cause" seems not to be confined to misconduct, but rather to anything which applies to the applicant's house as distinguished from other houses. It was held that where the opposition is founded on a notice duly served that the public-house was too crowded from police supervision, this would be a valid ground for refusing a renewal: *Sharp v. Wakefield*, 22 Q. B. D. 239; 53 J. P. L. J. M. C. 57; 60 L. T. 130; 37 W. R. 187; *R. v. Smith or Hereford*, 42 J. P. 295; 48 L. J. M. C. 38; 39 L. T. 606. Whatever be the meaning of "personal cause," the jurisdiction to refuse renewals is precisely the same on the merits as in cases of applications, the personal cause being only a reason for requiring the applicant to attend in person or by advocate, and not in any way the ground of opposition. The legislature seems to have assumed that the licensing justices would renew all licenses as a matter of course, unless there be proved some misconduct or other objection personal to the applicant. And though it is now only in cases of some personal objection that a requisition can be served on the applicant and the justices on the occasion of a renewal, yet the joint effect of this section, and of the Act, 1874, section 26, has not been to cut down the absolute discretion of justices as to refusing to renew a public-house and nearly all other licenses, with or without cause given: *Sharp v. Wakefield*, *supra*; *Ex parte Martin*, 40 J. P. 3; *Ex parte Bendall*, 42 J. P. 88.

grounds of opposition.] The enactment does not confine the nature of the ground of opposition that may be raised to a

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NOTE.

Sect. 42. renewal. The ground must not be so utterly frivolous and capricious that the discretion of the justices, in giving effect to it, can be called no exercise of a judicial discretion at all; but they are not bound to give reasons in most cases for their decision: it is difficult by *certiorari* or *mandamus* to correct the decision, where there is no appeal on the merits except to quarter sessions; the High Court will not lay down rules as to what is or is not a ground of judicial discretion: *Sharp v. Wakefield, supra*. The circumstance that the house was too far removed from police supervision was held a good objection on the merits: *Ibid.* So it has been held that keeping the house shut during a negotiation for sale was a good objection: *Griffiths v. Lancashire JJ.*, 51 J. P. 453; 35 W. 732. And so if the renewal is opposed on the ground that the holder was convicted of an offence: *R. v. Birmingham JJ.* J. P. 132.

Justices starting objection without notice.] When the justices themselves start an objection to renewing such license, it must be done in open court, it is their duty not to decide and there, but to give notice to the applicant, and adjourn for further hearing, so that he may have an opportunity of answering the objection: *R. v. Farquhar*, L. R. 9 Q. B. 258; 39 J. P. And the Court has quashed an order of quarter sessions for regarding this matter: *Ruddick v. Justices of Liverpool*, 42 Q. B. 406. At the same time if both parties act on the assumption that an objection has been duly made and time given to answer, then it will be taken that they waived literal compliance with the section: *R. v. Kent Justices*, 41 J. P. 263. Moreover, when justices start the objection and give an opportunity to the applicant to answer it, they must apparently still hear the evidence on oath: *R. v. Eales*, 44 J. P. 553; 42 L. T. (N.S.) 735. The justices as above stated, must not only see that the objection is stated in open court, but that notice of it is duly served, and also that an order to attend has been served on the license holder: *R. v. M. Tydvil JJ.*, 49 J. P. 213; 54 L. J. M. C. 78; 14 Q. B. D. The objection need not be stated in writing in open court, it should be stated in the seven days' notice to attend which the justices themselves should serve on the holder: *R. v. Redditch JJ.*, 50 J. P. 246.

Mandamus to re-hear.] Should the justices refuse to renew a license though no notice of objection had been served or though an objection started by justices, and a *mandamus* issues to re-hear, the justices may then be made and heard on the merits at the re-hearing: *R. v. Howard or Congleton JJ.*, 53 J. P. 454. See also 9 G. C. 61, s. 1, and notes, *post*.

me renewals justices' discretion limited.] As **Sect. 42.**
renewal of certificates for some out-door licenses, the
are not the same wide discretion as they have in refer-
ence or publican's licenses, for they cannot refuse to
renew a certificate to sell wines, spirits, sweets, or cider not to be
on the premises, except on one of the grounds set forth in
s. 27, s. 8, *post*. See *R. v. Scott*, 22 Q. B. D. 481; 53
L. J. M. C. 78; 60 L. T. 231; 37 W. R. 301. And the
statutes in such cases state the grounds of refusal: *Ex parte*
Surrey JJ., 3 Q. B. D. 374; 47 L. J. M. C. 104; 42
W. R. 682. As regards certificates to sell beer, cider,
or wine consumed on the premises, if the house was licensed
in 1869, and the justices have not since made any order
refusing the privilege, then the justices cannot refuse such
renewal on one of the grounds already specified: 32 & 33
s. 19; 33 & 34 Vict. 29, s. 7. See notes. *R. v. King*
et al JJ., 20 Q. B. D. 430; 52 J. P. 199; 57 L. J. M. C.
1607; 36 W. R. 600. On the other hand, if the house
was not licensed on 1st May, 1869, then the justices may
refuse the certificate in cases of beer without stating
the grounds, but only to the appeal to quarter sessions. See 32 &
33 s. 19; 33 & 34 Vict. c. 29, s. 7; 43 Vict. c. 6; 45 &
46 s. 14, *post*.
If the justices refuse to renew the license, and the applicant
may get a temporary license from the Inland Revenue
Commissioner, the appeal is determined. See section 53. And if the
applicant fails for some inadvertence or misadventure, the
Commissioner may postpone the application: 33 & 34 Vict. c. 29, s. 11.

renewal.] The fee on a renewal of an alehouse license
is the same as a grant of a new license, namely, 7s. 6d. See 9
s. 15. The fee on the renewal of a certificate is 4s.
to the clerk, and 1s. to the constable: 33 & 34 Vict. c. 29,
in which case 1s. is to be added for registration fee. See
ante, p. 64.

by endorsement.] The renewal of a license or
certificate may now be endorsed on the license or certificate, or
on a separate piece of paper. See section 48, *post*.

against refusal to renew.] It is to be borne in mind
that there is always an appeal to the quarter sessions of the
statute in all cases against a refusal of the justices to renew, as
in s. 61, s. 27, which was extended to all licenses, was
inserted by this Licensing Act. See schedule. And in some
cases a person may be entitled to appeal, though he was not a

NOTE.

Sect. 42. licensed person, and therefore not entitled to the notice of opposition and other requirements stated in this section: *R. v. M. Bosworth JJ.*, 51 J. P. 438; 57 L. T. 56; 35 W. R. 734; 56 M. C. 96; *R. v. Newcastle JJ.*, 51 J. P. 244; *R. v. Lawrence Liverpool JJ.*, 11 Q. B. D. 638; 47 J. P. 596; 52 L. J. M. C. 49 L. T. 244; 32 W. R. 20.

NOTE.

Where a rule *nisi* was granted for a *mandamus* to justice to hear an application to renew, and before cause was shown and general annual meeting was held, the court gave power to justices to hear the application as if for the next following year. *R. v. Miskin Higher JJ.*, 50 J. P. 247.

43. Confirmation of licenses.] Any person who appears before the licensing justices and opposes the grant of a new license, and no other person, may appear and oppose the confirmation of such grant before the confirming authorities in counties or boroughs; and the confirming authority may award such costs as it shall deem just to the party who shall succeed in the proceedings before them. In a county the justices in quarter sessions assembled, and in a borough the borough justices [and in cases where a joint committee is appointed, then the joint committee], may make rules as to the proceedings to be adopted for the confirmation of new licenses and the costs to be incurred in any such proceedings, and the person by whom such costs are to be paid.

The words *in brackets* were inserted by the Licensing Act, 1875, section 25.

The *procedure* before the confirming authority is to be regulated by the justices or joint committee, so far as regards the proceedings and the costs before the confirming authority, as to which application for information should be made to the clerk of the peace or clerk of the licensing justices. In either case, by section no person is to be allowed to oppose the grant of a new license or certificate before the confirming authority who did not appear before the licensing justices. Any person is entitled to appear and oppose the grant of a new license. But if the objecting party appears, he may call additional evidence and

businesses before the confirming authority. The proceedings will be similar in many respects to an appeal, but the confirming authority has nothing to do with the reasons acted on by the licensing justices, for the object is, that the applicant shall satisfy two independent bodies of justices that there are good reasons for his application.

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NOTE.

The rules made regulating procedure before the confirming authority may be objected to if *ultra vires*. But in the exercise of their jurisdiction the discretion of the confirming authority on the merits is absolute: *R. v. Middlesex JJ.*, 42 J. P. 469; *Re Annandale JJ.*, 37 J. P. 85. See *ante*, p. 65.

With regard to any costs ordered to be paid, these may be recovered as stated in section 51, *post*, namely, under 11 & 12 Vict. c. 18, s. 18, and 42 & 43 Vict. c. 49.

44. Disqualification for licenses.] No license shall be granted under the Intoxicating Liquor Licensing Acts to any person or in respect of any premises declared by or in pursuance of any of the Intoxicating Liquor Licensing Acts or this Act to be disqualified persons or disqualified premises during the continuance of such disqualification. Any license held by any person so disqualified, or attached to premises so disqualified, shall be void.

The expression "Intoxicating Liquor Licensing Acts" means 9 Geo. 4, c. 61, and the Wine and Beerhouses Acts, 32 & 33 Vict. c. 27, and 33 & 34 Vict. c. 29, *post*. See section 74. The disqualification of premises is always limited to a term of years, but in one case (section 3) the disqualification of the person may be made for life. See as to disqualification of persons, 9 Geo. 4, c. 61, s. 16; 1 Will. 4, c. 64, s. 2; 3 & 4 Vict. c. 61, s. 7; 23 & 24 Vict. c. 27, s. 22; 32 & 33 Vict. c. 27, s. 11; 33 & 34 Vict. c. 29, s. 14; and this Act, sections 3, 15, 19, 30. As to disqualification of premises, see this Act, sections 3, 19, 30, 31.

45. Qualification of premises for licenses.] Premises to which at the time of the passing of this Act no license under the Acts recited in the Wine and Beerhouse Act, 1869, authorising the sale of beer and wine for consumption thereupon is attached, shall not be subject to any of the provisions now in force prescribing

Sect. 45. a certain rent or value or rating as a qualification receiving any such license.

Premises not at the time of the passing of this licensed for the sale of any intoxicating liquor for *sumption thereupon* shall not be qualified to receive license authorising such sale unless the following conditions are satisfied :—

(a) The premises, unless such premises are a *refreshment room*, shall be of not less than following annual value :—

If situated within the city of London or liberties thereof, or any parish or place subject to the jurisdiction of the Metropolitan Board of Works, or within four mile radius from Charing Cross within the limits of a town containing population of not less than *one hundred thousand* inhabitants, *fifty* pounds annum ; or if the license do not authorise the sale of spirits, *thirty* pounds annum.

If situated elsewhere and within the limits of a town containing a population of less than *ten thousand* inhabitants, *£* pounds per annum ; or if the license not authorise the sale of spirits, *£* pounds per annum.

If situated elsewhere and not within such town as above mentioned, *£* pounds per annum ; or if the license not authorise the sale of spirits, *£* pounds per annum :

(b) The premises shall be, in the opinion of licensing authority, structurally adapted

the class of license for which a certificate is sought : Provided that no house, not licensed at the time of the passing of this Act, for the sale of any intoxicating liquor for consumption on the premises, shall be qualified to have a license attached thereto authorising such sale, unless such house shall contain, exclusive of the rooms occupied by the inmates of such house, if the license authorise the sale of spirits, two rooms, and if the license do not authorise the sale of spirits, one room, for the accommodation of the public. Sect. 45.

obscure clause at the commencement of this section was of being construed as impliedly repealing all valuation qualifications for out-door wine and beer licenses. But it has been decided that it does not repeal that qualification; and the meaning it has is confined to in-door licenses : *R. v. Land JJ.*, 8 Q. B. D. 369 ; 51 L. J. Q. B. D. 142 ; 46 J. P. W. R. 178.

There are houses, namely, table-beer houses, under 24 & 25 Vict. c. 21, s. 3, and houses licensed to sell wine for consumption on premises under 23 Vict. c. 27, ss. 1, 8, and also for ale and sweets under sections 69, 74 of this Act, which never were subject to any rating or value qualification, and as to which the valuation qualification could not apply.

[*in-door licenses.*] The second paragraph of the section is so obscure. It says in effect as to all houses (alehouses, beerhouses, winehouses) to be licensed for the first time after 10th August, 1872, for the sale of liquor to be consumed on the premises, that the valuation qualification in this case is to be applicable, that is to say, in the metropolis and above 100,000 population, 50% annual value, &c. And they are so to have at least one public room if for sale of beer, two public rooms if for sale of spirits. As to structural qualification, as no rules are laid down, the justices will be the judges of what this means ; but the number of rooms is stated to be a minimum qualification. In cases of premises covering considerable area, there seems no reason why the several rooms should be under one roof. As regards alehouses or public-houses, defined under 9 Geo. 4, c. 61, there was no valuation qualification introduced by that or any other Act. Though, therefore all ale-

Sect. 45. houses to be licensed for the first time since 1872 will require valuation in the latter part of the section, still those which licensed on 10 August, 1872, will continue to be exempt such valuation qualification.

NOTE.

The area of the jurisdiction of the Metropolitan Bow Works is set forth in 18 & 19 Vict. c. 120, ss. 249, 250, & A. B. C. 25 & 26 Vict. c. 102, ss. 42, 112.

The word "town" was defined in this Act, section 74, as definition was amended by Licensing Act, 1874, section 33. old definition in section 74 of this Act was also repealed certain purposes set forth in Act, 1874, section 33.

The words "annual value" are explained in the section.

As to the "census," as a test of population, see section 65, and notes.

46. *Annual value necessary for obtain grant of license.*] Whereas in certain cases a license under the Wine and Beerhouse Acts, 1869 and 1870, not to be granted unless the house and premises in respect of which such license is granted are of a certain rent and value, or are rated to the poor rate on a basis of an annual value of such amount as is respectively in the Acts recited in the Wine and Beerhouse Act, 1869; and it is expedient to substitute in such cases "annual value" for the said rent, value, and rating, and to provide for the ascertaining the annual value of such house and premises: Be it therefore enacted that in cases not provided for by the last recited section—

A license under the Wine and Beerhouse Acts, 1869 and 1870, shall not be granted in respect of any premises which are not, in the opinion of the licensing justices who grant such license, of such annual value as is mentioned in that behalf in the Acts recited by the Wine and Beerhouse Act, 1869; and those Acts shall be construed as if "annual value" were therein substituted

rent," "value," "rated on a rent or annual value," Sect. 46.
 ther like expressions.

at the first general annual licensing meeting after
 passing of this Act the licensing justices are of
 on that any premises which are licensed for the
 of intoxicating liquors at the passing of this Act are
 of such annual value as authorises the grant of a
 se for such premises, they may, notwithstanding,
 w such license upon the condition, to be expressed
 e license, that the holder thereof, before the next
 ral annual licensing meeting, improves the premises
 ; to make them of sufficient annual value, and if the
 er fail to comply with such condition the license
 l not be renewed at such next general annual
 using meeting.

[*cases not provided for in last section.*] This section
 ies to all houses for the sale of liquor to be consumed on
 premises which already had a certificate under the Wine
 Beerhouse Acts on 10th August, 1872, namely, beerhouses,
 houses, wine and refreshment houses, those to be licensed
 he first time after 1872 being subject to the qualification in
 atter part of the 45th section. The "annual value" of these
 es licensed in 1872 is, however, to be taken instead of the
 it" or "rating," &c., and the Acts 3 & 4 Vict. c. 61, and 23
 . c. 27, s. 8, will be read as if the "annual value" was sub-
 ted. If the houses licensed in 1872 could not stand this new
 then the justices were to require the houses to be improved
 alue, otherwise the license or certificate was not to be renewed
 373. And this power still continues.

ie out-door beerhouses and ciderhouses, whether licensed in
 or not, will still require the same valuation as before, under
 4 Vict. c. 44, and 33 & 34 Vict. c. 29, s. 10, the value being
 ed at as stated in the next (47th) section.

; to out-door winehouses and table-beer houses (and sweets
 spirits and liqueur houses, which are on the same footing as
) they never required a valuation qualification, and do not
 require it.

was decided on a *certiorari* to quash part of a license in *R.*
ester JJ., *R. v. Mann*, 42 L. J. M. C. 35 ; 37 J. P. 212 ; L. R.

Sect. 46. 8 Q. B. 235 ; 27 L. T. (N.S.) 847 ; 21 W. R. 329, that this does not apply to alehouses licensed under 9 Geo. 4, c. 64, confined to houses licensed under the Wine and Beerhouse 32 & 33 Vict. c. 27 ; 33 & 34 Vict. c. 29, *post*.

NOTE.

47. *Mode of ascertaining annual val*

The licensing justices shall take such means as seem to them best for ascertaining the annual value of any premises for the purposes of this Act, and as they think fit, order a valuation to be made of such premises by a competent person appointed by them for that purpose, and may order the costs of such valuation to be paid by the applicant for a license.

The annual value of premises for the purposes of this Act shall be the annual rent which a tenant might be reasonably expected, taking one year with another, to pay for the same, if he undertook to pay all the rates and taxes, and tithe commutation rentcharge (if any), and if the landlord undertook to bear the cost of the repairs and insurance and other expenses (if any) necessary to maintain the premises in a state to command the said rent, and if no license were granted in respect thereof ; but no land shall be included in such premises other than any pleasure ground, flower or kitchen garden, yard, or curtilage usually occupied and used by the persons residing in or frequenting the house.

The justices are entitled under this section to take such means as they think fit for ascertaining the annual value, and are not bound to accept the valuation list or any other valuation, even by the valuer. But they must have some evidence on which to arrive at the conclusion they may arrive at. The actual rent paid is necessarily a conclusive test of annual value. They may order the premises to be re-valued at the expense of the applicant.

The mode of recovering the costs of a valuation of premises is pointed out at the end of section 51 ; but in all cases

will no doubt deem it expedient to volunteer such a pay- **Sect. 47.**
which can seldom be considerable in amount.

premises are to be valued at the same rent as if they had
use attached to them, and in the manner described.

NOTE.

beer or ciderhouse requires to be a dwelling house, where
is a real resident holder and occupier, if the house is used
a shop or place of business for other purposes, the value of
sole premises must be taken: *Garatty v. Potts*, L. R. 6
86; 35 J. P. 168; 40 L. J. M. C. 1; 23 L. T. 554; 19
127.

test of valuation is to be taken as at the time of the
g of the application; hence, where the valuation was not
nt at the date of the general annual meeting, but was made
nt at the adjournment day, when the case was heard, the
held this sufficient: *R. v. Montagu*, 49 J. P. 55. And
adjoining premises are added, and used with the original
es, the annual value may always be properly increased, so
ake up the required amount.

8. Regulations as to form of licenses.]

Following regulations shall be made with respect to
es:

Every license granted after the commencement
of this Act shall be in such form as may from
time to time be prescribed by a Secretary of
State.

A renewal of a license may be made by an en-
dorsement on the license, or by the issue of a
copy of the old license, but in the latter case
there shall be endorsed on such copy all con-
victions made within the previous five years
which are endorsed on the old license.

Commissioners of Inland Revenue may alter the
of any license granted by them for the sale of
cating liquors, in such manner as they may think
ient, for the purposes of bringing such form into
rmity with the law for the time being in force.

forms of justices' licenses have been issued by the Secretary
e, and will be found in the Appendix.

Sect. 48. The second clause as to licenses or certificates provides a means of preserving the continuity of the character of the license. In the eye of the law a license ceases to exist at the end of the licensing year, and what becomes of the paper on which it is written is of no consequence. It is not important, for by the aid of the register of licenses the character and previous convictions of the party licensed may be traced. But it is nevertheless very convenient (as this section permits) to have a paper embodying the license which lasts for years, and is renewable by endorsement, so as to save trouble, and show at a glance the conduct of the holders during the previous years. The licenses and certificates granted for 1872 may be continued hereafter by endorsements, though a new piece of paper can always be substituted at any of the annual licensing meetings.

See a form of Inland Revenue license in Appendix.

49. *Provisions as to six-day licenses*

Where on the occasion of an application for a license or transfer or renewal of a license, which authorises the sale of any intoxicating liquor for consumption on the premises, the applicant, at the time of his application, applies to the licensing justices to insert in the license a condition that he shall keep the premises in respect of which such license is or is to be granted closed during the whole of Sunday, the justices shall insert the said condition in such license.

The holder of a license in which such condition is inserted (in this Act referred to as a six-day license) shall keep his premises closed during the whole of Sunday, and the provisions of this Act with respect to the closing of licensed premises during certain hours on Sunday shall apply to the premises in respect of which a six-day license is granted as if the whole of Sunday were mentioned in those provisions instead of certain hours only.

The holder of a six-day license may obtain from the Commissioners of Inland Revenue any license granted

such commissioners which he is entitled to obtain **Sect. 49.**
 pursuant of such six-day license, upon payment of
 seventh parts of the duty which would otherwise
 payable by him for a similar license not limited to
 days ; and if he sell any intoxicating liquor on
 day he shall be deemed to be selling intoxicating
 or without a license.

the notice which a licensed person is required to
 keep painted or fixed on his premises shall, in the
 of a license under this section, contain words indi-
 cating that such license is for six days only. In calcu-
 lating the amount to be paid for a six-day license any
 fraction of a penny shall be disregarded.

This section applies to alehouses, beerhouses, and all the
 places included in this Act, where liquors are consumed on the
 premises.

[*Right of license holder to close his house.*] This section
 is to be based on the notion that there is some binding obliga-
 tion on the keeper of licensed premises to keep his house open
 the year round for the sale of liquors. For this notion,
 however, there seems no authority. It is true that, at common
 law, if a man keeps an inn, that is a house of entertainment for
 man and beast, or rather for travellers, he is bound, if he has
 accommodation, to receive, and procure food for, the traveller,
 and may be indicted, or liable to an action, if he refuses to receive
 a traveller when he has accommodation, and can make no
 reasonable objection : *R. v. Ivens*, 7 C. & P. 213 ; *R. v. Luellin*, 12
 L. 445 ; 1 Show. 270 ; *Hawthorn v. Hammond*, 1 C. & K. 404 ;
Wall v. Jackson, 6 C. & P. 725 ; see further, 26 & 27 Vict. c. 41,
 s. 1. But this obligation is confined to travellers and to food
 and drink, and would not necessarily extend to the supply of
 intoxicating liquors. An innkeeper, whether licensed or not, is
 bound to this extent, but no further, and as to all the other
 persons, they are merely in the position of shopkeepers
 to sell a certain article, but may, if they please, shut up their
 shop at any hour or day when it suits their convenience. All
 they require to do is to take care not to sell intoxicating
 liquors without a license, and not to sell during the times when
 persons are prohibited from selling, and not to commit the
 offences relating to licensed houses. Beyond those limits

Sect. 49. they are their own masters. There is no declaration in statutes that the holders of licenses, as such, are bound to keep open all the times that they are not forbidden to do so. There is no penalty imposed on them by any statute expressly or impliedly for not supplying intoxicating liquors to any person. They keep open as long as they can merely for their own convenience and profit. At the same time, if they shut up their houses at unexpected times, and so put to inconvenience the public or neighbours, this might be a good reason for the licensing justices at the next general annual licensing meeting refusing to renew the license, as they may always do, with or without reason. As regards nearly every license for indoor consumption, the general rule is, therefore, as to all intoxicating liquors, that the licensed person is prohibited from selling within certain hours; he is nevertheless not bound to sell during the hours not prohibited, unless he keeps an inn, and in that case he is only bound to sell food and drink, which food need not, however, be intoxicating drink.

This section, however, though founded on a fundamental mistake as to the obligations of licensed persons, must be interpreted so as to give effect to its provisions. A person may, if he chooses, put himself in the position of holding a six-day license. The chief advantage will be that he will pay only six-sevenths of the usual duty to the Inland Revenue; and if he makes also an early closing house under the Act, 1874, section 8, he will be entitled to a license on paying five-sevenths of the usual duty; but on the other hand, he will render himself liable to heavy penalties (including the penalty under section 3) for selling or keeping his house open for sale of liquors during any part of Sunday.

Effect of six-day license.] It has been held that if a license holder at any time, either on an application for a new license or a transfer or renewal thereof, apply for a condition as to the days to be inserted in the license, this is an election which precludes himself and any succeeding licensee from ever again obtaining a renewal or transfer of the license without such condition inserted. Thus, if a license is for the first time granted as a six-day license, the justices cannot be in any way compelled, on application for a renewal, to grant a seven-day or ordinary license leaving out this condition: *R. v. Crewkerne JJ.*, 21 Q. B. D. 52; 52 J. P. 372; 57 L. J. M. C. 127; 60 L. T. 84; 36 W. R. 631.

And in like manner, if the holder of a license held for years as a seven-day license, happen to ask the six-day condition to be inserted, he and any successor will be forever precluded from demanding by way of renewal the original form of the license be restored: *R. v. Liverpool JJ.*, 52 J. P. 376.

to be observed that this section applies only to licenses authorise the sale of "liquor for consumption *on the premises*—that is to say, alehouse or public-house licenses under 4, c. 61, and beerhouse, ciderhouse, and refreshment-censess for consumption of liquor on the premises. And when a house keeper obtains a six-day license under 9 Geo. 4, c. 61, he is still bound, like other innkeepers, to afford meat and refreshment to travellers on Sundays if he so holds himself out. He is, however, owing to the express enactment in the Act, section 10, sell liquors on Sunday to travellers, or any person, whatever, except to those lodging in his house; and therefore that extent gets rid of the common law duty.

Sect. 49.
NOTE.

Christmas Day and Good Friday, see notes to Act, 1874, 3.
This section was extended to the United Kingdom by 43 & 44 Vict., c. 20, s. 44.

1. *Licenses may be removed from one part of a district to another, &c.*] Licenses may be removed from one part of a licensing district to another part of the same district, or from one licensing district to another licensing district within the same county, in the following :—

1. An application for an order sanctioning removal shall be made by the person desiring to be the holder of the license when removed, and shall be made at a general annual licensing meeting, or any adjournment thereof, to the justices authorised to grant new licenses in the licensing district in which the premises are situated to which the license is to be removed.

2. Notice of the intended application shall be given in the same manner as notice is given of an application for the grant of a new license.

3. A copy of the notice shall be personally served upon the person sent by registered letter to the owner of the premises from which the license is to be removed,

LICENSING ACT, 1872, s. 50.

l. 50. and the holder of the license, unless he is also applicant.

The justices to whom the application is made shall not make an order sanctioning such removal unless they are satisfied that no objection to such removal is made by the owner of the premises to which the license is attached, or by the holder of the license, or by any other person whom such justices determine to have a right to object to the removal.

Subject as aforesaid, such justices shall have the power to make an order sanctioning such removal as they have to grant new licenses; but no order shall be valid unless confirmed by the confirming authority of the licensing district.

The removal of a license was a novelty introduced in 1872 when the justices could not grant a new license, as was the case under the Intoxicating Liquor Licences Suspension Act of 1868, now repealed. But now that the justices are subdivided into bodies—one a licensing and the other a confirming body, without any restriction on their absolute joint discretion in granting new licenses (except as regards some of the houses mentioned in the Wine and Beerhouse Acts)—there seems little reason for continuing this practice. Moreover, as the application for removal of a license or certificate is put on the same footing as an application for a new license, it is difficult to see what advantage is to be gained by applying for a removal. It is compulsory in the justices to grant it. If they refuse it, there is no appeal. If they grant it, it must still be confirmed (unless it is an off-license) by the confirming authority. In the case of a wine, off-spirit, off-sweets, or off-cider license, the justices may refuse unless on one of the four grounds set forth in 32 & 33 c. 27, s. 8. The fact that if the license or certificate be removed there will be no addition to the aggregate number of licensing houses, is the only circumstance which may tell in its favour if a new license were applied for, and it were shown, as it may be, that somebody else did not intend to apply for a renewal. The same circumstances would exist in favour of an application for a new license. No confirmation is required if it is an off-license. Licensing Act, 1874, s. 24.

words "or by any other person whom such justices shall
ine to have a right to object to the removal," seem to con- **Sect. 50.**
te the case of a mortgagee or other person having a legal **NOTE.**
t in the premises, as was seen in *Garrett v. Middlesex JJ.*
r. *Garrett*, 12 Q. B. D. 620; 48 J. P. 358; 53 L. J. M. C. 81;
R. 646.

party applying for a removal may combine with his appli-
one for a provisional grant to a house, not yet built but
to be built. See Act, 1874, s. 22.

Legal Proceedings.

**L. Summary Proceedings for offences under
Act, &c.]** Except as in this Act otherwise ex-
y provided, every offence under this Act may be
uted, and every penalty and forfeiture may be
ered and enforced, in manner provided by the
nary Jurisdiction Act, 1848, subject to the fol-
g provisions :—

The court of summary jurisdiction, when hearing
and determining an information or complaint,
other than in a case where the offence
charged is that of being found drunk in any
highway or other public place, or any licensed
premises, shall be constituted either of two or
more justices of the peace in petty sessions
sitting at a place appointed for holding petty
sessions, or of a stipendiary magistrate or some
other officer for the time being empowered by
law to do alone any act authorised to be
done by more than one justice of the peace,
sitting alone or with others at some court or
other place appointed for the administration of
justice :

(*Repealed* by 47 & 48 Vict. c. 43, sched.)

(*Repealed* by 47 & 48 Vict. c. 43, sched.)

Sect. 51. (4) (Part of this sub-section *repealed* by 47 & Vict. c. 43, sched.)

In all cases of summary proceedings under this Act, the defendant and his wife shall be competent to give evidence.

(5) All forfeitures shall be sold or otherwise disposed of in such manner as the court may direct, and the proceeds of such sale or disposal (if any) shall be applied in the like manner as penalties, but the court may direct that such proceeds may be applied in the first instance in paying the expenses of and incidental to any search and seizure which resulted in such forfeiture.

(6) Penalties and forfeitures under this Act shall be for the purpose of any Act respecting the application of such penalties, or the costs, charges, and expenses attending proceedings for recovery of such penalties or of forfeitures, shall be deemed to be penalties or forfeitures under any Act relating to the Inland Revenue.

Any officer appointed by the Commissioners of Inland Revenue may sue for any penalties under this Act, and when so sued for any penalties which may be recovered shall be applied in the manner in which excise penalties are for the time being applicable by law.

Where under this Act any sum for costs (other than costs upon a conviction or order of dismissal of an information) or for compensation, or both, is ordered to be awarded to be paid by any person, the amount thereof shall be recovered in manner directed by "The Summary Jurisdiction Act, 1848," for the recovery of costs awarded upon the dismissal of an information or complaint.

the offences specified in sub-section 1 are those in section 12, **Sect. 51.**
p. 15.

Defendant and wife as witnesses.—The allowing of a defendant (clause 4), in a criminal proceeding, and his wife to give evidence was a novelty; but it has since been applied to other cases. Being competent witnesses, the defendant and wife are also compellable witnesses, and are on the same footing as other married witnesses. Where the wife is the accused person, and is summoned, she as well as her husband both give evidence. *Seager v. White*, 48 J. P. 436; 51 J. (N.S.) 261.

NOTE.

Procedure under Summary Jurisdiction Acts.—This Act having been partly repealed is now replaced by the *Summary Jurisdiction Acts*, 11 & 12 Vict. c. 43, 42 & 43 Vict. c. 49, & 48 Vict. c. 43, which contain the following enactments.

Description of offence and proof of exceptions, &c.—

The description of any offence in the words of the Act, or any order, bye-law, regulation, or other documents creating the offence or in similar words shall be sufficient in law. (2) Any defence, exemption, proviso, excuse, or qualification, whether it is or does not accompany in the same section, the description of the offence, in the Act, order, bye-law, regulation or other instrument creating the offence, may be proved by the defendant, and need not be specified or negatived in the information or complaint; and if so specified or negatived no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant: 42 & 43 Vict. c. 49, s. 39. The general rule is that a person who relies on his license as a defence is bound to prove it: *Turner v. Johnson*, 51 J. P. 22.

The summons in all cases where a licensed person is accused shall state that the production of his license will be required, as clerk of the court may have to indorse some particulars upon the license: Licensing Act, 1872, section 55, *post*.

Litigation of punishment.—Where a court of summary jurisdiction can impose imprisonment or fine, that court may dispense the imprisonment without hard labour, and reduce the prescribed period, or do either of those acts, and in case of fine, if in respect of a first offence may reduce the prescribed amount: 43 Vict. c. 49, s. 4. See also Licensing Act, 1874, section 12,

Scale of imprisonment for non-payment of money.] The mode of imprisonment imposed by a court of summary jurisdiction under this Act, or under any other Act, whether past or

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Sect. 51. future, in respect of the non-payment of any sum of money adjudged to be paid by a conviction, or in respect of the default of a sufficient distress to satisfy any such sum, shall, notwithstanding any enactment to the contrary in any past Act, be a period as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale; that is to say,—

NOTE.

Where the amount of the sum or sums of money adjudged to be paid by a conviction, as ascertained by the conviction,	The said period shall not exceed
Does not exceed ten shillings - - -	Seven days.
Exceeds ten shillings but does not exceed one pound - - -	Fourteen days.
Exceeds one pound but does not exceed five pounds - - -	One month.
Exceeds five pounds but does not exceed twenty pounds - - -	Two months.
Exceeds twenty pounds - - -	Three months.

And such imprisonment shall be without hard labour, unless where hard labour is authorised by the Act on which the conviction is founded, in which case the imprisonment may, if the court thinks the justice of the case requires it, be with hard labour, so that the term of hard labour awarded do not exceed the terms authorised by the said Act. 42 & 43 Vict. c. 49, s. 4.

Payment by instalments of or security taken for payment of money.] A court of summary jurisdiction, by whose conviction or order any sum is adjudged to be paid, may do all or any of the following things, namely,—

- (1) Allow time for the payment of the said sum; and
- (2) Direct payment to be made of the said sum by instalment and
- (3) Direct that the person liable to pay the said sum shall be at liberty to give to the satisfaction of that court, or of such other court of summary jurisdiction, or such person as may be specified by that court, security with or without a surety or sureties for the payment of the said sum or of any instalment thereof, and such security may be given and enforced in manner provided by this Act.

Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

A court of summary jurisdiction directing the payment of a sum or of an instalment of a sum may direct such payment to be

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at such time or times, and in such place or places, and to person or persons, as may be specified by the court; and person to whom any such sum or instalment is paid, where the clerk of the court of summary jurisdiction, shall as soon as he may be account for and pay over the same to that clerk: 42 & 43 Vict. c. 49, s. 7.

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NOTE.

provisions as to costs in the case of small fines.] Where a person is adjudged by a conviction by a court of summary jurisdiction to be paid does not exceed *five shillings*, then, except as the court may think fit to expressly order otherwise, an order shall not be made for payment by the defendant to the plaintiff of any costs; and the court shall, except so far as they may think fit to expressly order otherwise, direct all fees payable or by the informant to be remitted or repaid to him; the court shall also order the fine or any part thereof to be paid to the plaintiff in or towards the payment of his costs: 42 & 43 Vict. c. 49, s. 8.

power of court to discharge accused without punishment.] If upon the hearing of a charge for an offence punishable by a court of summary jurisdiction under this Act, or under any other Act, whether past or future, the court of summary jurisdiction think that though the charge is proved the offence was in the particular of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment,—

The court, without proceeding to conviction, may dismiss the information, and, if the court think fit, may order the person charged to pay such damages, not exceeding forty shillings, and such costs of the proceeding, or either of them, as the court think reasonable; or

The court upon convicting the person charged may discharge him conditionally on his giving security, with or without sureties, to appear for sentence when called upon, or to be of good behaviour, and either without payment of damages and costs, or subject to the payment of such damages and costs, or either of them, as the court think reasonable:

Provided that this section shall not apply to an adult convicted under the provisions of this Act of an offence of which he has pleaded guilty, and of which he could not, if he had not pleaded guilty, be convicted by a court of summary jurisdiction: 42 & 43 Vict. c. 49, s. 16.

right to claim trial by jury in some summary offences.] A person when charged with an offence for which an offender is

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“*Summary procedure.*”

NOTE. liable on summary conviction to be imprisoned for a term not exceeding *three* months, and which is not an assault, in appearing before the court and before the charge is gone into, and not afterwards, claim to be tried by a jury, and thereupon the court of summary jurisdiction shall deal with the case in all respects as if the accused were charged with an indictable offence, and the offence shall be deemed to be an indictable offence. 42 & 43 Vict. c. 49, s. 17.

Power to award costs of conviction or dismissal.] In all cases of summary convictions or orders, it shall be lawful for the justice or justices making the same in his or their discretion to award and order that the defendant shall pay to the prosecutor or complainant such costs as shall seem just and reasonable in that behalf. And where such justice or justices shall dismiss the information or complaint, it shall be lawful for him or her in his or their discretion in and by his or their order of dismissal to award and order that the prosecutor or complainant respectively shall pay to the defendant such costs as to such justice or justices shall seem just and reasonable, and the sums so allowed for costs shall in all cases be specified in such conviction or order of dismissal aforesaid, and the same shall be recoverable by distress &c.: 11 & 12 Vict. c. 43, s. 18.

The costs, for example, ordered by the confirming authority under the Licensing Act, 1872, section 43, *ante*, p. 81, are to be covered as set out in the above section of 11 & 12 Vict. c. 43,

Power to justices to issue warrant of distress and commitment.] Where a conviction adjudges a pecuniary penalty or where an order requires the payment of a sum of money, and no mode of raising or levying such penalty, compensation, or sum of money, or of enforcing the payment of the same is provided, any justice of the same county, division, borough, or town may issue his warrant of distress under his hand and seal; and in case of insufficient distress, another justice may, by indorsement on the warrant, authorise distress and sale of defendant's goods within such other county or place: 11 & 12 Vict. c. 43, s. 19. Until such warrant of distress is executed the defendant may be suffered to go at large, or be detained unless he give sufficient security to appear at the time and place for the return of the warrant: *Ibid.* s. 20. If, on return of such warrant of distress, sufficient distress is found, the justice may order the constable to convey the defendant to the house of correction or common gaol to be imprisoned [and kept to hard labour] for the time directed by the statute: *Ibid.* s. 21. Where the statute in that behalf

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NOTE.

les no further remedy in default of distress, or where the ss is insufficient, or where no mode of enforcing payment e penalty, &c., the defendant may be committed to imprisonment for three calendar months: *Ibid.* s. 22; 21 & 22 Vict. c. 73, s. 5.

litigations of warrant of distress and commitment.] (1) urt of summary jurisdiction, to whom application is made r to issue a warrant of distress for any sum adjudged to be by a conviction or order, or to issue a warrant for committing rson to prison for non-payment of a sum of money adjudged e paid by a conviction, or in the case of a sum not a civil ; by an order, or for default of sufficient distress to satisfy any 1 sum, may, if the court deem it expedient so to do, postpone issue of such warrant until such time and on such conditions, ny, as to the court may seem just.

2) The wearing apparel and bedding of a person and his ily, and to the value of 5*l.* the tools and implements of his le, shall not be taken under a distress issued by a court of mary jurisdiction.

3) Where a person is adjudged by the conviction of a court of mary jurisdiction or in the case of a sum not a civil debt by order of the court to pay any sum of money, and in default yment of such sum, a warrant of distress is authorised to be ied, and it appears to the court of summary jurisdiction to om application is made to issue such warrant, that such on has no goods whereon to levy the distress or that in the at of a warrant of distress being issued, his goods will be ufficient to satisfy the money payable by him, or that the y of the distress will be more injurious to him or his family a imprisonment, such court instead of issuing such warrant distress may, if it think fit, order the said person, on non- ment of the said sum, to be imprisoned for any period not eeding the period for which he is liable under such conviction order to be imprisoned in default of sufficient distress.

4) Where on application to a court of summary jurisdiction issue a warrant for committing a person to prison for non- ment of a sum adjudged to be paid by a conviction of any rt of summary jurisdiction or in the case of a sum not a civil t, by an order of such court or for default of sufficient distress atisfy such sum, it appears to the court to whom application made, that either by payment of part of the said sum whether the shape of instalments or otherwise, or by the net proceeds the distress, the amount of the sum so adjudged has been eed to such an extent that the unsatisfied balance if it had stituted the original amount adjudged to be paid by the

Sect. 51. conviction or order would have subjected the defendant to a maximum term of imprisonment, less than the term of imprisonment, to which he is liable under such conviction or order, the court shall, by its warrant of commitment, revoke the term of imprisonment, and order the defendant to be imprisoned for a term not exceeding such less maximum term instead of the term originally mentioned in the conviction or order: 49 Vict. c. 49, s. 21.

NOTE.

The forms of warrants of distress and commitment are contained in the Summary Jurisdiction Rules, 1886.

A warrant of commitment is not to be void for a defect alleged therein that the offender has been convicted and is a valid conviction or order: 42 & 43 Vict. c. 49, s. 39.

A warrant of distress will not be void for a defect if it appears that a conviction or order has been made, and there is a good valid conviction or order: 42 & 43 Vict. c. 49, s. 39. The manner of executing a warrant of distress is set forth in 42 & 43 Vict. c. 49, s. 40.

Where no method of recovery of penalty provided. In all cases where no method of recovery of a penalty or fine is provided by the above enactments of 11 & 12 Vict. c. 43, ss. 1 & 2, and 42 & 43 Vict. c. 49, s. 21, shall apply to such recovery: 47 & 48 Vict. c. 43, s. 5.

Proof of summary conviction.] (1) The clerk of every court of summary jurisdiction shall keep a register of the minutes and memorandums of all the convictions and orders of such court.

(2) Such register, and also any extract from such register, certified by the clerk of the court keeping the same to be a true and correct extract, shall be *prima facie* evidence of the matters contained therein for the purpose of informing a court of summary jurisdiction, acting for the same county, borough, or place as the court whose convictions, orders and proceedings are entered in the register; but nothing in this section shall dispense with the production of legal proof of a previous conviction for an offence when required to be proved against a person charged with another offence. Every such register shall be open for inspection without fee or reward by any justice of the peace, or by any person authorized in that behalf by a justice of the peace, or by a secretary of court: 42 & 43 Vict. c. 49, s. 22. See also as to proof of conviction in other cases, 34 & 35 Vict. c. 112, s. 18.

Proof of service of process, notices, &c.] A solemn declaration made before a justice of the peace as to service is *prima facie* evidence of service: 42 & 43 Vict. c. 49, s. 41.

Forfeitures sold.] The above provision as to sale of forfeited property will apply to the liquor declared by section 3, also by Act section 17, to be forfeited.

alties.] The mitigation of penalties is provided for in **Sect. 51.**
ing Act, 1874, section 12, *post*, and notes thereon ; also by
mmary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 4, *ante*,
NOTE.

As to application of penalties, see this Act, 1872, sec-
8 and notes, *post*. The Crown may remit the penalty : 22
. 32.

2. *Appeal to quarter sessions.*] If any person
aggrieved by any order or conviction made by a
of summary jurisdiction, the person so aggrieved
appeal therefrom, subject to the conditions and
tions following :—

The appeal shall be made to the next court of
quarter sessions. [The rest of this section was
repealed by 47 & 48 Vict. c. 43, sched.]

section does not affect the right of appeal against a refusal
ces to renew or transfer licenses or certificates ; as to which,
to the notices and other proceedings respecting such appeal,
eo. 4, c. 61, s. 27, and notes, *post*.

er this section, as originally drawn, it was held necessary
e each of the convicting justices with notice of appeal, and
) serve the clerk of the justices only was not sufficient :
v. *Buss*, 3 Q. B. D. 13 ; 41 J. P. 87 ; 37 L. T. (N.S.) 533 ;
I. M. C. 35 ; 26 W. R. 210. And this was the rule in all
uses of convictions : *R. v. Reading*, 10 L. J. M. C. 126 ;
Heshire JJ., 11 A. & E. 139 ; 3 P. & D. 23n. But see now

person aggrieved.] The person aggrieved is the person
as been convicted, or against whom an order has been made.
a license holder was convicted, it was held that the land-
as no right to appeal to quarter sessions though his interest
e indirectly affected by the conviction : *R. v. Andover*
s, 16 Q. B. D. 711 ; 50 J. P. 549 ; 55 L. J. M. C. 143 ;
I. 23 ; 34 W. R. 456.

summary Jurisdiction Acts, 1879 and 1884, as to
ls.] The procedure as to *appeals* against summary con-
s under the Licensing Acts is now regulated by the
summary Jurisdiction Acts, 1879, 42 & 43 Vict. c. 49 ; 1884,
3 Vict. c. 43.

cedure on appeal to general or quarter sessions.]
any person is authorised (some words here struck out by

ct. 52.

Procedure on Appeals.

NOTE.

47 & 48 Vict. c. 43, sched.) to appeal from the conviction or order of a court of summary jurisdiction to a court of general quarter sessions, he may appeal to such court, subject to the conditions and regulations following :

- (1) The appeal shall be made to the prescribed court of general or quarter sessions, or if no court is prescribed, to the *next practicable court* of general or quarter sessions having jurisdiction in the county, borough or place in which the said court of summary jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given upon which the conviction or order was founded ; and
- (2) The appellant shall, within the prescribed time, or if no time is prescribed within *seven days after* the day on which the said decision of the court was given, give notice of appeal by serving on the other party and on the clerk of the said court of summary jurisdiction a notice in writing of his intention to appeal, and of the general grounds of such appeal ; and
- (3) The appellant shall, within the prescribed time, or if no time is prescribed within *three days after* the day on which he gave notice of appeal, enter into a *recognizance* before a court of summary jurisdiction, with or without a sum or sureties as that court may direct conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court of appeal thereon, and to pay such costs as may be awarded by the court of appeal ; or the appellant may, if the court of summary jurisdiction before whom the appellant appears to enter into a recognizance think it expedient instead of entering into a recognizance, give such other security, by deposit of money with the clerk of the court of summary jurisdiction or otherwise, as that court deem sufficient ; and
- (4) Where the appellant is *in custody*, the court of summary jurisdiction before whom the appellant appears to enter into a recognizance may, if the court think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody ; and
- (5) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or *modify* the decision of the court of summary jurisdiction, or remit the matter, with the opinion of the court of appeal thereon, to a court of summary jurisdiction acting for the same county, borough or place as the court by

*Procedure on Appeals.***Sect. 52.****NOTE.**

whom the conviction or order appealed against was made, or may make such other order in the matter as the court of appeal may think just, and may by such order exercise any power which the court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the court of summary jurisdiction. The court of appeal may also make such order as to costs to be paid by either party as the court may think just; and

Whenever a decision is *not confirmed by the court of appeal*, the clerk of the peace shall send to the clerk of the court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also indorse on the conviction or order appealed against, a memorandum of the decision of the court of appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order; and

Every *notice* in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter *by the post* in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post : 42 & 43 Vict. c. 49, s. 31.

Quarter sessions always have power to dismiss the appeal on ground of the notice being bad: 12 & 13 Vict. c. 45, s. 2; *Lancashire J.J.*, 41 J. P. 293. A person convicted under the Statute of Crimes Act, 34 & 35 Vict. c. 112, s. 10, of harbouring a felon, *ante*, p. 28, is entitled to appeal in the same way as if he were convicted under the Licensing Acts: 39 & 40 Vict. c. 20, s. 5, *ante*, p. 29. The appeal from excise convictions is now also under the Licensing Acts: *Re Authers*, 22 Q. B. D. 355; 53 J. P. 116; 58 L. J. 62; 37 W. R. 320. The quarter sessions cannot add further restrictions on the appeal: *R. v. Pawlett*, L. R. 8 Q. B. 491; P. 775; 29 L. T. 390.

Application of provisions respecting appeals to quarter sessions to appeals under prior Acts. [The previous part of this section was repealed by 47 & 48 Vict. c. 43, sched.]
 Every Act, so far as unrepealed, prescribes that any appeal from the conviction or order of a court of summary juris-

Sect. 52.*Procedure on Appeals.*

NOTE. diction shall be made to the next court of general or sessions, such appeal may be made to the next practicable of general or quarter sessions having jurisdiction in the borough or place for which the court of summary jurisdiction acted, and held not less than *fifteen days* after the day on which the decision was given upon which the conviction was appealed against was founded: 42 & 43 Vict. c. 49, s. 32.

Appeal from court of summary jurisdiction by a case.] (1) Any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the court to state a special case setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the court declines to state the case, may apply to the High Court of Justice for an order requiring the case to be stated.

(2) The application shall be made and the case stated at such time and in such manner as may be from time to time directed by rules under this Act, and the case shall be heard and determined in manner prescribed by rules of court made in pursuance of the Supreme Court of Judicature Act, 1875, and Acts amending the same; and, subject as aforesaid, the application shall be made within 20 & 21 Vict. c. 43, intituled "An Act to improve the administration of the law so far as respects summary proceedings of justices of the peace," shall, so far as it is applicable, apply to a special case stated under this section, as if it were stated under that Act: 42 & 43 Vict. c. 49, s. 33. (The Summary Jurisdiction Rules, 1886, allow the application to be made in writing within seven days from the date of the proceeding to be questioned, and require the case to be stated within three months:) Provided nothing in this section shall prejudice the statement of any case under that Act: 42 & 43 Vict. c. 49, s. 33.

The demand of a case for the opinion of the High Court of Justice, under 20 & 21 Vict. c. 43, s. 2, and 42 & 43 Vict. c. 49, must be made in writing to at least two convicting justices, that is to say, a written notice must be served personally, or at the residence by registered letter to, those justices, and also a copy must be served on the clerk to the justices: *South Staffordshire JJ.* 19 Q. B. D. 168; 51 J. P. 662; 56 L. J. M. C. 122; 57 L. J. 36 W. R. 76; *Lockhart or Rutter v. St. Albans*, 21 Q. B. D. 52 J. P. 420; 57 L. J. M. C. 118; 36 W. R. 420.

Who may demand a case.] Not merely the person aggrieved, but either party to the proceeding may demand a case to be stated.

*Procedure on Appeals.***Sect. 52****NOTE.**

the opinion of the High Court under 20 & 21 Vict. c. 43, s. 2. under 42 & 43 Vict. c. 49, s. 33, it is only a person aggrieved can demand a case. See as to refusal of license, 9 Geo. 4, s. 27, and notes, *post*.

conditions as to case stated.] In demanding a case the appellant is not bound to state the point of law with which he is dissatisfied: *R. v. Newton*, 43 J. P. 351; *Ex parte Markham*, 34 J. P. 150. The recognizance will be in time if entered into before the trial of the case: *Stanhope v. Thursby*, 35 L. J. M. C. 182; 30 J. P. 342. And the appellant may take points not taken in the trial below, if fatal to the respondent: *Knight v. Halliwell*, L. R. 1 B. 412; 38 J. P. 470. The justices may, after deciding that they have no jurisdiction, state a case: *Muir v. Hoare*, 47 L. J. C. 17; 37 L. T. 315; 41 J. P. 471.

In asking a case to be stated, an appeal to quarter sessions is allowed: 20 & 21 Vict. c. 43, s. 14. And a *certiorari* is also usually granted, unless great delay has occurred: *Palmer v. Thatcher*, 3 B. D. 346; 47 L. J. M. C. 54; 42 J. P. 213; 37 L. T. 786.

The computation of days includes Sunday: *Peacock v. R.*, 1 B. (N.S.) 264; 27 L. J. M. C. 224; 22 J. P. 403; 31 L. T. 101; *Ex parte Simpkins*, 29 L. J. M. C. 23; *Wynne v. Ronaldson*, 29 J. P. 566.

The statutory conditions of transmitting the case to the Crown Court are conditions precedent to the hearing of the case by the High Court, unless the appellant found it impossible to comply with them: *Morgan v. Edwards*, 20 L. J. M. C. 108; 5 H. & N. 1; 24 J. P. 245; *Woodhouse v. Woods*, 29 L. J. M. C. 149; 24 J. P. 759; 1 L. T. 59; *Mayer v. Harding*, L. R. 2 Q. B. 410; 24 J. P. 376; 16 L. T. 429.

53. *Continuance of license during pendency of appeal against justices' refusal to renew.*] Where the justices refuse to renew a license, and an appeal against such refusal is duly made, and such license expires before the appeal is determined, the Commissioners of Inland Revenue may, by order, permit the person whose license is refused to carry on his business during the pendency of the appeal upon such conditions as they think just; and, subject to such conditions, any person so permitted may, during the continuance of such

53. order, carry on his business in the same manner as if the renewal of the license had not been refused.

Where a license is forfeited on or in pursuance of conviction for an offence, and an appeal is duly made against such conviction, the court by whom the conviction was made may, by order, grant a temporary license to be in force during the pendency of the appeal upon such conditions as they think just.

This section is similar to 33 & 34 Vict. c. 29, s. 9, now repealed and extends to alehouses as well as to the houses mentioned in the Wine and Beerhouse Acts.

The words "refuse to renew" are obviously used not in the technical sense given to the words "renewal of a license" as used in section 42, and as defined in section 74, but in the popular sense adopted in *R. v. Lawrence or Liverpool*, 11 Q. B. D. 636; 47 J. P. 596; 52 L. J. M. C. 114; 49 L. T. 244; 32 W. R. 51, namely, "refuse to continue a license to the same house," whether the same person hold such license or not. Hence this section must obviously include transfers as well as renewals.

Where the holder of a license or certificate dies, see section 3 of this Act, and 9 Geo. 4, c. 61, s. 14.

54. *Conviction, &c., not to be quashed for want of form, or removed by certiorari.* No conviction or order made in pursuance of this Act, originally or on appeal, relative to any offence, penalty, forfeiture or summary order, shall be quashed for want of form, or made by a court of summary jurisdiction, be removed by *certiorari* or otherwise at the instance of the Crown or of any private party, into any superior court. [The rest of this section repealed by 47 & 48 Vict. c. 43.]

If the conviction has been wrongly drawn up, a fresh conviction may be drawn up before filing with the clerk of the peace: *Ex parte Austin*, 45 J. P. 302; *Ex parte Kenyon*, 45 J. P. 303.

This section does not take away the *certiorari* where want of jurisdiction or fraud is shown by affidavit: *R. v. Bolton*, 1 Q. B. 61; *Re Bailey*, 3 E. & B. 607; *R. v. Gillyard*, 12 Q. B. 527.

5. *As to record of convictions of licensed persons for offences under Act.]* With respect to the record of convictions of licensed persons for offences under this Act committed by them as such, the following provisions shall have effect in cases where this requires the conviction to be recorded on the license ; as to say :—

The court before whom any licensed person is accused shall require such person to produce and deliver to the clerk of the court the license under which such person carries on business, and the summons shall state that such production will be required :

If such person is convicted, the court shall cause the short particulars of such conviction and the penalty imposed, to be indorsed on his license before it is returned to the offender :

The clerk to the licensing justices shall enter the particulars respecting such conviction, or such of them as the case may require, in the register of licenses, kept by him under this Act :

If the clerk to the court be not the clerk to the licensing justices, he shall send forthwith to the last-mentioned clerk notice of such conviction, and of the particulars thereof :

Where the conviction of any such person has the effect of forfeiting the license, or of disqualifying any person or premises for the purposes of this Act, the license shall be retained by the clerk of the court, and notice of such forfeiture and disqualification shall be sent to the licensing

Sect. 55.

officer of the district, and if the clerk to court is not the clerk to the licensing justice to such last mentioned clerk, together with forfeited license.

While this section was part of the Act, 1872, the rule was the justices were compelled to record some convictions on license, and in other cases had the power to do so if they thought fit. But now, by the Act, 1874, section 13, the justices in cases have a discretion as to recording the conviction on a license. As to the keeping of the register of licenses, see section 36, p. 62, and notes. See also section 58, as to extracts there being given in evidence; also Act, 1874, section 13, *post*.

The holder of the license is subject to a penalty for refusal to deliver his license when demanded by certain persons. section 64, *post*.

This section enables the court to get possession of the license or certificate when the Act requires the conviction to be recorded. But if for any cause the license cannot be got, the same effect is produced if the justices order a conviction to be recorded. section 33, *ante*, p. 61.

The Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, *ante*, p. 100, also contains provisions as to justices' clerks regarding all convictions, and as to certified copies of extracts used in evidence.

56. *For protection of owners of licensed premises in cases of offences committed by tenants*

Where any tenant of any licensed premises is convicted of any offence against this Act, and such offence is the repetition of which may render the premises liable to be disqualified from receiving a license for any period, it shall be the duty of the clerk of the licensing justices to serve, in manner provided by this Act, notice of every such conviction on the owner of the premises.

Where any order of a court of summary jurisdiction declaring any licensed premises to be disqualified from receiving a license for any period has been made

shall cause such order to be served on the owner **Sect. 56.**

premises, where the owner is not the occupier, in addition of a statement that the court will hold sessions at a time and place therein specified, at which the owner may appear and appeal against such order on all or any of the following grounds, but on no other grounds :—

That notice, as required by this Act, has not been served on the owner, of a prior offence, which on repetition renders the premises liable to be disqualified from receiving a license at any period ; or

That the tenant by whom the offence was committed held under a contract made prior to the commencement of this Act, and that the owner could not legally have evicted the tenant in the interval between the commission of the offence, in respect of which the disqualifying order was made, and the receipt by him of the notice of the immediate preceding offence which on repetition renders the premises liable to be disqualified from receiving a license at any period ; or

That the offence in respect of which the disqualifying order was made, occurred so soon after the receipt of such last-mentioned notice that the owner, notwithstanding he had legal power to evict the tenant, could not with reasonable diligence have exercised that power in the interval which occurred between the said notice and the second offence.

the owner appear at the time and place specified,

Sect. 56. and at such sessions, or any adjournment thereof, the court that he is entitled to have the order can on any of the grounds aforesaid, the court shall upon direct such order to be cancelled, and the shall be void. (The rest of this section was *repealed* Act, 1874, section 33.)

This section is intended to protect the owner of licensed premises from the consequences of the offences committed by a tenant or occupier. See the definition of owner in section 36 and Licensing Act, 1874, section 29. The clerk of the licensing justices gets, as a matter of course, by the 55th section, notice of the conviction from the clerk of the convicting court. The words, "where any tenant of any licensed premises is convicted of an offence against this Act, and such offence is one the commission of which may render the premises liable to be disqualified," apply to all those offences which, by the exercise of the discretion of the justices, would be recorded on the license or certificate. Convictions can now only be recorded if the justices think that though under the Act, 1872, it was otherwise. See Licensing Act, 1874, section 13. Whenever a conviction, which might have been recorded under the Act, 1872, i.e., under sections 8, 14, 16, 17, 28, occurs, the clerk of the licensing justices is to give notice to the owner. Under the 30th section the premises become disqualified if the justices do not say the contrary. Under the 31st section the premises become disqualified whether the justices say anything on the subject or not. Both cases are included in section 31, sub-section (3), which will result in forfeiture in the first instance, and thereafter as consequence thereupon, disqualification of premises by the operation of section 31, it seems the clerk would not require to give notice in these cases; but there seems no reason why he should not give notice in those cases also.

The clerk obtains the name and residence of the owner by section 36, which obliges the applicant for a grant or renewal to state the owner's name, and by section 70, which obliges the owner himself to give his name and address to the clerk. See also Licensing Act, 1874, section 29.

The second paragraph refers only to the cases where the court "declares licensed premises to be disqualified." In those cases where the premises become disqualified under the Act, whether the justices declare them to be so or not, such a declaration seems not to apply, except in the cases specified in section 31.

An offence by a licensed person under the *Sale of Food Acts* is treated as an offence under the Licensing Acts. See Licensing Act, 1874, section 15, *post*, and this Act, section 36, *ante*, p. 62. Sect. 56
NOTE.

If the tenant has forfeited his license for a single offence, the owner may in some cases apply for a continuance of the license. See Licensing Act, 1874, section 15.

As to service of notices, see section 70, *post*.

On the letting of a public-house there is no implied agreement on the part of the tenant not to do acts which may cause a forfeiture of the license: *Maw v. Hindmarsh*, 28 L. T. (N.S.) 644.

57. *As to conviction of licensed persons of more than one offence on same day.*] Where a licensed person is convicted of more offences than one, committed on the same day, the convictions for which are by this Act directed to be recorded on his license, the court by whom he is convicted may, in their discretion, order that one or some only of such convictions shall be recorded.

The offences here referred to need not be the same kind of offences. The words, "by this Act directed to be recorded," now include those offences which the justices directed to be recorded, or could have directed to be recorded, and thus all those under sections 5, 6, 13, 14, 16, 17, 28, are included. See Licensing Act, 1874, section 13. When two or more recordable convictions occur on one day, the justices who have convicted may reduce to one the number to be recorded. And it seems they may now say that none shall be recorded, for in all cases it is discretionary in the justices to record any conviction: Licensing Act, 1874, section 13. Nor does this power apply to other than recordable convictions. It is obvious that the justices are intended to exercise their power of reduction and selection in recording several convictions, when the last of the convictions has been made.

58. *Evidence of endorsements and register.*] The registers of licenses kept in pursuance of this Act shall be receivable in evidence of the matters required by this Act to be entered therein. Every endorsement upon a license, and every copy of an entry made in the

Sect. 58. registers of licenses in pursuance of this Act, purporting to be signed by the clerk to the licensing justices, and (in case of a copy) to be certified to be a true copy, shall be evidence of the matters stated in such endorsement and entry, without proof of the signature or authority of the person signing the same.

The register of licenses is regulated by section 36. See section 31, and Licensing Act, 1874, section 13.

This section gives a convenient and easy mode of proving endorsements by the official copy signed by the clerk to the licensing justices.

See also a convenient mode of proving all convictions under Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 23, p. 100, and the same under the Prevention of Crimes Act, 1871, 34 & 35 Vict. c. 112, s. 18.

59. *Saving for indictments, &c., under other Acts.*] Nothing in this Act shall prevent any person from being liable to be indicted or punished under any other Act, or otherwise, so that he be not punished twice for the same offence.

This section prevents the implied repeal of previous enactments dealing with the same offence, and practically gives the prosecutor the election to proceed under either, subject to this condition, that after punishing the offender under either, he cannot afterwards punish him under the other enactment. See, for example of this double remedy under section 17. See section 60 and 5 & 6 Vict. c. 44, s. 4. See also sections 3, 4, and 4 & 5 Will. 4, c. 85, ss. 17, 20. See also section 8, and there referred to. The enactment seems to include "any Act" to be passed after 1872, and therefore will apply to section 10 of this Act, as compared with the Licensing Act, 1874, section 17.

The general rule is that no person can be convicted twice in respect of the same subject-matter: *Wemyss v. Hopkins*, L. R. 1 Q. B. 378; 44 L. J. M. C. 101; 39 J. P. 549; 32 L. T. 9; 23 W. R. 691; *Eddleston v. Barnes*, 1 Ex. D. 67; 40 J. P. 89; 45 L. J. M. C. 73; 34 L. T. 497; *Sims v. Pay*, 58 L. J. M. C. 39; 53 J. P. 100. Nevertheless, a revenue offence and a general statutory offence may arise on the same facts: *Saunders v. Baldy*, 6 B. & S. 7; L. R. 1 Q. B. 87; 30 J. P. 148; 14 W. R. 177; 13 L. T. 322.

*Miscellaneous.*Sect. 60.*Disqualification of justices to act under*

] No justice shall act for any purpose under or under any of the Intoxicating Liquor Acts, except in cases where the offence is that of being found drunk in any highway or public place, whether a building or not, or on licensed premises, or of being guilty while drunk of disorderly conduct, or of being drunk while on any highway or other public place, of any offence in connection with or in possession of loaded fire-arms, who is or is a partner or partner's share in any company which is a common brewer, distiller, maker of ale, or retailer of malt or of any intoxicating liquor in the licensing district, or in the district or dis- trict adjoining to that in which such justice usually sits. No justice shall act for any purpose under or under any of the Intoxicating Liquor Acts in respect of any premises in the profits of which he is interested, or of which he is wholly or partly owner, lessee, or occupier, or for the owner, lessee, or occupier, of which he is the manager or

justice, hereby declared not to be qualified to sit under this Act, who knowingly acts as a justice for any of the purposes of this Act shall for every such offence be liable to a penalty not exceeding one hundred pounds to be recovered by action in one of Her Majesty's Courts at Westminster :

And that—

any justice shall be disqualified under this section to act in respect of any premises by reason of

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his having vested in him a legal interest or and not a beneficial interest, in such premises or the profits thereof :

- (2) No justice shall be liable to a penalty for more than one offence committed by him under this section before the institution of any proceedings for the recovery of such penalty :
- (3) No act done by any justice disqualified by this section shall by reason only of such disqualification be invalid.

The offences referred to are contained in section 12, s. 20.

“Acting under any of the Intoxicating Liquor Licensing Acts mean, by section 74, the statutes 9 Geo. 4, c. 61 ; 32 & 33 V. c. 27 ; 33 & 34 Vict. c. 29, *post*.

If the justice be a shareholder in a company, which is a banking company, or of a railway or other company, which is the owner of a hotel, that would, under this section, disqualify such justice.

It is no disqualification if the business in which the justice is interested is carried on in a different county or place with another licensing district in England or Wales, unless it is an adjoining district, or his premises are the subject of the proceedings.

The former disqualification of justices, under 9 Geo. 4, c. 6, s. 6, was more extensive than under the present Act, for it was equally a disqualification if the business was carried on anywhere in England. It was an oversight not to have repealed 5 & 6 Vict. c. 44, s. 4, which still keeps alive the more extended disqualification of 9 Geo. 4, c. 61, s. 6, as regards justices acting at petty sessions under 5 & 6 Vict. c. 44, s. 1. A justice who is a brewer, &c., may act in the cases excepted in the third line of this section, namely, in adjudicating on charges of drunkenness, subject to the exception as to interestedness defined by this section.

61. *Extension of jurisdiction of justices on river, water, &c.*] For all the purposes of this Act any pier, quay, jetty, mole, or work extending from any place within the jurisdiction of any licensing justices

of summary jurisdiction into or over any part of Sect. 61.
 a, or any part of a river within the ebb and flow
 a tide, shall be deemed to be within the jurisdiction
 ch justices and court.

r the purpose of jurisdiction in any proceeding
 r this Act, any river or water which runs between
 rms the boundary of two or more licensing districts,
 f the jurisdiction of two or more courts of sum-
 7 jurisdiction, shall be deemed to be wholly within
 such licensing district and the jurisdiction of each
 ch courts.

ie jurisdiction of justices, irrespective of this enactment,
 nds over the shore between high and low water mark :
leton v. Brown, 3 E. & E. 234 ; 30 L. J. M. C. 1. Hence, if a
 h or tent were erected on the seashore where there are races,
 used under an occasional license, and an offence were com-
 ed, the justices would have jurisdiction.

he Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 46,
 rges this section, and makes any offence committed within
 yards of a boundary, or begun in one jurisdiction and com-
 ed within another, triable by either court ; and in the case of
 ffence in respect of a carriage or vessel, any court through
 ch the same passes during the journey has jurisdiction.

32. *Evidence of sale or consumption of in-
 icated liquors.*] In proving the sale or consump-
 of intoxicating liquor for the purpose of any pro-
 ding relative to any offence under this Act, it shall
 be necessary to show that any money actually passed
 ny intoxicating liquor was actually consumed, if the
 rt hearing the case be satisfied that a transaction in
 nature of a sale actually took place, or that any
 sumption of intoxicating liquor was about to take
 ce, and proof of consumption, or intended consump-
 a, of intoxicating liquor on premises to which a
 ense under this Act is attached, by some person other

Sect. 62. than the occupier of or a servant in such premises shall be evidence that such liquor was sold to person consuming, or being about to consume, or carrying away the same by or on behalf of the holder of license.

The sections with reference to which this enactment will most used will be sections 3, 5, 6, 7, 8, and Act, 1874, section 63, and the enactment meets the case where, for example, the person gives liquor in exchange for some valuable consideration. But a pure gift be established, it will not be within this or the other sections: *Petherick v. Sargent*, 26 J. P. 135; 6 L. T. 48. Evidence referred to in the latter part of the section means *pro facie* or admissible, but not conclusive evidence, and it will be open for the defendant to rebut such evidence. It has been held that where a drunken man accompanies a sober man who orders liquor, which is consumed by the drunken man, on licensed premises, this is evidence of selling to the drunken man: *Scatchard v. Johnson*, 52 J. P. 389; 57 L. J. M. C. 41.

Where a wife held a license, and the husband carried liquor to a private house, and sold it at a raffle there going on, and brought back the money and gave it to the wife, she may be convicted of selling at an unlicensed place, contrary to section 3: *Sage White*, 51 L. T. (N.S.) 261; 48 J. P. 436.

63. *Avoidance of excise license on forfeiture of license.*] Where a license is forfeited in pursuance of this Act, or becomes void under any of the provisions of this Act, any license for the sale of intoxicating liquors granted by the Commissioners of Inland Revenue to the holder of such license shall be void.

When justices refuse to renew a license and the applicant appeals, or takes steps to keep alive the license, the Inland Revenue may grant a temporary license under section 53, also where the license is forfeited, and an appeal is duly made, a convicting court may grant a temporary license: Section 53. Cases of forfeiture for felony (see 3 & 4 Vict. c. 61, s. 7; 23 c. 27, s. 22; 33 & 34 Vict. c. 29, s. 14), a remedy is pointed out where a tenant for the first time is disqualified or forfeits the license. See Licensing Act, 1874, section 15.

4. *Production of license by holder and* **Sect. 64**
lity on non-production.]

Every holder of a license, an order of exemption made by a local authority, rsuance of this Act, shall, by himself, his agent, or nt, produce such license or order within a reason-time after the production thereof is demanded by a æ of the peace, constable, or officer of Inland nue, and deliver the same to be read and examined im. Any person who acts in contravention of section shall be liable to a penalty not exceeding ounds.

ie order of exemption from closing hours, permanently or orarily by a local authority, is dealt with in sections 26, 29, pp. 50, 55.

his penalty will not be incurred unless a previous demand has made by a person authorised to demand, namely, a justice he peace, constable, or officer of Inland Revenue, and the se has not been produced within a reasonable time. The er is entitled to have the license returned to him after it been read and examined, unless, as may happen, the clerk of justices is authorised to retain it in his hands for certain er purposes, as under section 55, sub-section (5). Every person oned must also produce his license to the justices' clerk : on 55, sub-section (1).

ie burden of proof of a license as a defence lies on the defen- according to 42 & 43 Vict. c. 49, s. 39 : *Turner v. Johnson*, P. 22.

5. *Population to be according to last census.]*
 population of any area for the purposes of this Act be ascertained according to the last published ts for the time being.

his section has reference to section 45, *ante*, p. 45 ; also nising Act, 1874, section 32, *post*.

the Beerhouse Act, 3 & 4 Vict. c. 61, s. 1, the test of popula- is said to be "according to the last parliamentary census," tting the word "published," and that Act is not incorporated his Act. Hence, where a census depending on that Act was

Sect. 65. not published, though otherwise known, the justices might act upon it. See *R. v. Cumberland JJ.*, 8 Q. B. D. 369; 46 J. P. 7.
NOTE. 51 L. J. Q. B. 142; 30 W. R. 178.

66. *Moiety of penalties may be awarded to police superannuation fund.*] Any part not exceeding a moiety of any penalty recovered under this Act may, if the court shall so direct, be paid to the superannuation fund of the police establishment within whose jurisdiction the offence in respect of which such penalties are imposed shall have occurred.

As to the application of penalties, see also section 51, and 11 & 12 Vict. c. 43, s. 31. In boroughs having no court of quarter sessions, but a separate commission of the peace, or neither one nor the other, the penalties, if not otherwise disposed of, were to be paid to the treasurer of the county: *Winn v. Mossman*, L. R. 4 Exch. 292; 38 L. J. Exch. 200; 33 J. P. 743; 20 L. T. 673; *Mayor of Reigate v. Hunt*, L. R. 3 Q. B. 244; 37 L. J. M. C. 70; 18 L. T. 237; 16 W. R. 896; 9 B. & S. 129; 32 J. P. 342; *R. v. Dale*, 17 J. P. 342; 22 L. J. M. C. 44; 1 Dears. 37.

The *Municipal Corporations Act*, 45 & 46 Vict. c. 50, s. 221, lays down the following rules for some boroughs:

Application of penalties in quarter sessions boroughs.]

(1) Where by an Act passed or to be passed any fine, penalty, or forfeiture is made recoverable in a summary manner before any justice or justices, and payable to the Crown or to any body corporate, or to any person whomsoever, the same if recovered and adjudged before any justice of a borough having a separate court of quarter sessions, shall, notwithstanding anything in the Act under which it is recovered, be recovered for and adjudged to be paid to the treasurer of the borough.

(2) But this section shall not apply to a fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered,

(a) Directs payment thereof to the informer, or to any person aggrieved:

(b) If passed since the *Municipal Corporations Act*, 1835, directs that the same shall go in any other manner and not to the borough funds:

(c) Relates to the customs, excise, or post office, or to trade or navigation, or to any branch of the revenue of the Crown.

The Crown may remit the penalty: 22 Vict. c. 32.

67. *Limit of mitigation of penalties.*] (*Re-* **Sect. 67**
saled by Licensing Act, 1874, section 12: see that
ction, also 42 & 43 Vict. c. 49, s. 4, *ante*, p. 95.)

68. *Regulations as to retail licenses of whole-
 ale dealers.*] No person shall sell by retail liqueurs or
 pirts under the authority of any retail license which
 ach person shall have obtained as a wholesale spirit
 ealer from the Commissioners of Inland Revenue,
 xcept in premises occupied and used exclusively for
 he sale therein of intoxicating liquor, and which pre-
 mises have no communication with the premises of nor
 re in any way occupied by a person who is carrying
 n any other trade or business, unless such person shall
 ave first obtained from the licensing justices a license
 uthorising such sale in premises not exclusively so
 ccupied and used.

The additional retail license here referred to is allowed to
 icensed dealers in spirits by 24 & 25 Vict. c. 21, s. 2, *post*; and
 ee notes thereto.

As to the spirit dealer's license, see notes to section 3, *ante*, p. 4,
 and Spirits Act, 1880, 43 & 44 Vict. c. 24, *post*.

The foreign or British spirits are to be sold in any quantity not
 less than one reputed quart bottle, or as to foreign liqueurs, in the
 bottles in which the same may have been imported.

The premises, if used exclusively for the sale of intoxicating
 liquor, are exempted from any license by section 73, *post*.

69. *Licenses for sale of liqueurs, &c., by
 retail not to be consumed on the premises.*] A
 license for the sale of liqueurs or spirits by retail not to
 be consumed on the premises may, where such license is
 required by this Act, be granted in the same manner in
 all respects in which a license for selling wine not to be
 consumed on the premises may by law be granted, and

Sect. 69. an application for such a license shall not be refused except upon one or more of the grounds on which a certificate in respect of a license to sell by retail beer, cider, or wine not to be consumed on the premises may be refused. (Part of the section *repealed* by 46 & 47 Vict. c. 39, sched.)

Provided also, that nothing in this Act contained in relation to the requirements of a justices' license shall affect the sale of liqueurs or spirits or sweets under any excise license granted before the passing of this Act during the continuance of such excise license.

As to the license for selling wine not to be consumed on the premises, see 23 Vict. c. 27, s. 3; and 32 & 33 Vict. c. 27, s. 8.

As the applicants for spirit and liqueur licenses for consumption off the premises are put on the same footing as wine licensees under 32 & 33 Vict. c. 27, and 33 & 34 Vict. c. 29, it follows that they must give notice before applying, as required by 32 & 33 Vict. c. 27, s. 7, and by Licensing Act, 1872, s. 40. They can only apply at the general annual licensing meeting or its adjournment. See section 74, "Definition of License." The justices can only refuse the license or its renewal or transfer on the first grounds stated in 32 & 33 Vict. c. 27, s. 8: *R. v. Scott*, Q. B. D. 481; 53 J. P. 119; 58 L. J. M. C. 78; 60 L. T. 231; W. R. 301; *R. v. Smith or Southport JJ.*, L. R. 8 Q. B. 146; J. P. 214; 42 L. J. M. C. 146; 28 L. T. 129; 21 W. R. 31. The fourth ground of refusal mentioned in 32 & 33 Vict. c. 27, s. 8, has no application to these licenses, for they were never subject to any valuation qualification before 32 & 33 Vict. c. 27, and that statute does not impose any new qualification of that kind. The license or certificate may be transferred in case of death, bankruptcy, &c., as in the case of other licenses: 33 & 34 Vict. c. 29, s. 4. See also this Act, section 3, *ante*, p. 3.

As regards the *closing of such premises*, though they must comply with the hours set forth in the Licensing Act, 1874, sections 3, 9, yet the keepers can only be convicted for selling or keeping open, &c., for the sale of liquors. As they usually sell other articles than liquors they may keep open after prohibited hours for the sale of other articles, provided they neither sell nor expose for sale nor keep open for the sale of liquors. They should therefore cover up the liquors in some way so as not to exp

n to view of customers during the closing hours, and justices **Sect. 69.**
 ld not in that case be warranted in convicting unless they
 id that the keeping open for the sale of other articles than
 ore was only a pretence. See *Tassell v. Ovenden*, 2 Q. B. D.
 ; 41 J. P. 710; 46 L. J. M. C. 228; 36 L. T. 696; 25 W. R.
 ; *Brigden v. Heighes*, 1 Q. B. D. 330; 40 J. P. 661; 45 L. J.
 C. 58; 34 L. T. 242; 24 W. R. 272; *Ex parte Joynt*, 38 J. P.

NOTE.

70. *Notices may be served by post.*] All notices
 l documents required by this Act to be served or sent
 y, unless otherwise expressly provided, be served and
 t by post, and, until the contrary is proved, shall be
 med to have been served and received respectively at
 time when the letter containing the same would be
 ivered in the ordinary course of post; and in proving
 sh service or sending it shall be sufficient to prove
 it the letter containing the notice or document was
 paid, and properly addressed.

Where any officer or other person interested in any
 ensed premises is entitled to receive notice of a con-
 stitution under this Act, he shall supply his address to
 clerk or other person required to send such notice,
 d any notice sent to such address shall be deemed to
 duly served; and where no notice is supplied in pur-
 nance of this section, all notices shall be deemed to be
 ly served if sent to any address which such clerk or
 her person in the exercise of his discretion believes to
 the address of the person to whom the notice was so
 it.

Provided that any notice of any offence required by
 is Act to be sent to the owner of licensed premises
 all be either served personally or sent by registered
 ter.

The service of notices by registered letter was allowed by
 & 34 Vict. c. 29, s. 4, in cases of application for a new certifi-

Sect. 70. cate under 32 & 33 Vict. c. 27, s. 7. The same mode of service notice has also been extended to all applications under this for new licenses or transfer licenses under 9 Geo. 4, c. 61, and Beerhouse Acts, as stated by section 40, *ante*, p. 71. All notices may now be served by ordinary letter, and need not be registered letter, except that the notices mentioned in the paragraph must be by registered letter if not personally served.

NOTE.

The notice to the *owner* here referred to is required by section 31. Another notice to owner of a removed license is provided for by section 50.

The notices of *appeal* under this Act against convictions orders may also be served by post, and by virtue of the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 31, *ante*, p. 58, be served on the clerk of the convicting justices instead of on justices themselves.

71. Schedules to be part of Act.] The schedules to this Act shall be construed and have effect as part of this Act.

The schedules have since been repealed, but leaving the Act unaffected, see Sched., *post*.

Saving Clauses.

72. Saving of certain privileges, rights, &c.] Nothing in this Act shall affect or apply to—

1. The privileges at the date of the passing of the Act enjoyed by any *university* in England, or by the respective chancellors or scholars of the same, or their successors :
2. The privileges at the date of the passing of the Act enjoyed by the mayor or burgesses of the borough of St. Albans in the county of Hertfordshire, or their successors, or the exemptions from obligation to take out a license as defined by the Act, or a license from the Commissioner of Inland Revenue enjoyed by the Company of

master, wardens, and commonalty of *vintners* of Sect. 72.
the city of London :

1. The sale of *spruce* or black beer :
2. The sale of intoxicating liquor by proprietors of *theatres* in pursuance of the Acts in that behalf :
3. The sale of intoxicating liquor in *packet boats*, in pursuance of the Acts in that behalf :
4. The sale of intoxicating liquor on *special occasions* in pursuance of the provisions in that behalf enacted :
5. The sale of spirits in *canteens*, in pursuance of any Act regulating the same :
6. The sale of medicated or *methyated* spirits, or spirits made up in medicine and sold by medical practitioners or chemists and druggists :
7. The sale of intoxicating liquor by *wholesale* :
8. Any penalties recoverable by or on behalf of the Commissioners of *Inland Revenue* or any laws relating to the excise.

1) The privileges of the *universities* are also referred to in Geo. 4, c. 61, s. 36 ; 5 & 6 Vict. c. 44, s. 6 ; 1 Will. 4, c. 64, s. 3 ; 3 & 4 Vict. c. 61, s. 22 ; 23 Vict. c. 27, s. 45 ; 32 & 33 Vict. c. 27, s. 20 : *R. v. Archdall*, 8 A. & E. 281 ; 3 N. & P. 696.

2) The privileges relating to St. Albans are also referred to in 23 Vict. c. 27, s. 45 ; 32 & 33 Vict. c. 27, s. 20.

The privileges of the *vintners* of London are noticed in Vaugh. 359 ; Levinz. 217, 221 ; 9 Geo. 4, c. 61, s. 36 ; 32 & 33 Vict. c. 27, s. 20 ; also in Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 5 ; the City of London Police Act, 2 & 3 Vict. c. 14, s. 29. The entry of premises, see 30 & 31 Vict. c. 90, s. 12 ; 25 Vict. c. 16.

The word "vintner" is not restricted to the selling of wine to be consumed on the premises : *Wells v. Attenborough*, 24 L. T. 1 ; 19 W. R. 465.

The privilege of selling wine as a freeman of the Vintners' Company extends only to persons whose freedom has been gained by patrimony or servitude and their widows : Boards

Sect. 72.*Theatre Licenses.*

NOTE. Order, 26th February, 1830. Order of Vintners' Company, March, 1839.

(3) The sale of *spruce* beer is noticed in 25 Vict. c. 22. The duty on spruce beer and Berlin white beer is set in 44 Vict. c. 12, s. 3; 52 Vict. c. 7, s. 3.

(4) The sale of liquors in *theatres* is regulated by 5 & 6 Vict. c. 39, s. 7; 6 & 7 Vict. c. 68. See also 2 & 3 Vict. c. 47, s. 1, as to metropolitan police district, and 2 & 3 Vict. c. 94, s. 30 as to the city of London. As to Ireland, see 37 & 38 Vict. c. 6.

Theatre licenses.] The licensing of houses or places for public performance of stage plays was transferred to local councils by 51 & 52 Vict. c. 41, s. 7. It shall not be lawful for any person to have or keep any house or other place of resort in Great Britain for the public performance of stage plays without authority by virtue of letters patent from Her Majesty or without license from the Lord Chamberlain or from the justices of the peace; the offender incurs a penalty not exceeding £100 for every day on which the house or place is kept open: 6 & 7 Vict. c. 68, s. 2. The Lord Chamberlain's license is required for theatres within the cities of London and Westminster and the boroughs of Finsbury, Marylebone, Tower Hamlets, Lambeth, Southwark, and places where Her Majesty shall occasionally reside; also New Windsor and Brighton: *Ibid.* s. 3. In these places applications may be made to the justices of the peace for granting licences for theatres: *Ibid.* s. 5. The license is to be granted by the Lord Chamberlain or justices to the proprietor and responsible manager for the time being: *Ibid.* s. 7. The appeal against the refusal by justices of a theatre license: *parte Harrington*, 4 *Times*, L. R. 435. The Lord Chamberlain may in certain circumstances suspend the license or order a theatre to be closed: *Ibid.* s. 8. The justices also shall make such rules for insuring order and decency, for regulating the hours of keeping open theatres in their jurisdiction, and in some circumstances to order the theatre to be closed: *Ibid.* s. 9. A penalty of 10*l.* per day is incurred by every person who for hire or reward, or permit, or cause, permit, or suffer to be acted or presented in any stage play in any place not being a theatre duly licensed as a theatre: *Ibid.* s. 11. And this penalty is incurred by acting a stage play in a booth: *Tarling v. Frothingham*, 28 L. T. 814; 21 W. R. 785; 38 J. P. 197; *Fredericks v. Bland*, 1 H. & C. 584; 32 L. J. M. C. 14; 27 J. P. 104.

Stage play includes every tragedy, comedy, farce, opera, ballet, pantomime, melodrama, pantomime, or other entertainment of the stage or any part thereof: *Ibid.* s. 23.

*Theatre Licenses.***Sect. 72.****NOTE.**

of every new stage play and every act, scene, &c., to be produced and acted in any theatre in Great all be sent to the Lord Chamberlain, who may allow or acting, and a penalty of 50*l.* is incurred for acting these their having been allowed: *Ibid.* ss. 12—15. The are recoverable by action or summarily before justices : . And there is an appeal to quarter sessions against a .: *Ibid.* s. 20.

re license under section 2 is required only for places not out permanently used for stage plays, while section 11 h those casually using a place: *R. v. Strugnell, R. v. L. R.* 1 Q. B. 93; 35 L. J. M. C. 78; 13 L. T. 433; 14 3; 30 J. P. 101. But a theatre built and used in a use for a public performance requires a license: *Shelley* , 12 Q. B. D. 11; 53 L. J. M. C. 16; 49 L. T. 779; 276; 48 J. P. 244.

estation, whether a representation given in a house licensed and dancing is such as to amount to a stage play, and theatre license would be necessary, is mainly one of fact, ecision of justices would not usually be interfered with : . *Strange*, L. R. 1 C. P. 175; 35 L. J. M. C. 31; 29 ; *Day v. Simpson*, 18 C. B. (N.S.) 680; 34 L. J. M. C. L. T. 386; 13 W. R. 748.

ower to regulate metropolitan theatres and music-halls 1 to the Metropolitan Board of Works by 41 & 42 Vict. 11, 12, and is now transferred to the London County 51 & 52 Vict. c. 41.

ation room managed under the authority of a secretary r the Admiralty may be used for the public performance lays without a license: 52 Vict. c. 3, s. 7.

to sell intoxicating liquors at theatres.] It shall . for the commissioners and officers of excise, and they y authorised and empowered to grant retail licenses to m to sell beer, spirits, and wine in any theatre established royal patent, or in any theatre or other place of public ment licensed by the Lord Chamberlain or by justices of , without the production by the person applying for such : licenses, of any certificate or authority for such person . common inn, alehouse, or victualling-house, anything in or Acts to the contrary notwithstanding: 5 & 6 Will. 4, 7. The above section of 35 & 36 Vict. c. 94, s. 72 only theatres strictly so-called from having a justices' license not exempt places of public entertainment: *R. v. Inland*

Sect. 72. *Revenue*, 21 Q. B. D. 569; 57 L. J. M. C. 92; 59 L. T. 1 W. R. 696; 52 J. P. 390.

NOTE.

As to the duty payable, see *Inland Revenue Act, 1880*, Vict. c. 20, s. 43, *post*.

Though *theatre* bars require no justices' license, yet *the time of closing* set forth in 37 & 38 Vict. c. 49, ss. 3, 9, applies to premises in which intoxicating liquors are sold by retail, with any exception of theatres. *Martin v. Barker*, 50 L. J. M. C. 45 L. T. (N.S.) 214; 45 J. P. 749; 29 W. R. 789. And at the time of opening and keeping open, the natural meaning of the statutory exemption seems to be, that the selling at the bar is incidental to the time of performance at the theatre, at a reasonable time before and after, but always subject to the time of closing set forth in 37 & 38 Vict. c. 49, ss. 3, 9, *post*.

(5) As to the sale in *packet boats*, see 9 Geo. 4, c. 47; Will. 4, c. 75; 5 & 6 Vict. c. 44, s. 5; 43 & 44 Vict. c. 20, s. 1.

(6) As to sale on *special occasions*, see section 29, where various exemptions from closing hours may be obtained. There are also occasional licenses granted to sell at other than the licensed place under the authority of 25 & 26 Vict. c. 22, s. 26 & 27 Vict. c. 33, s. 20; 27 & 28 Vict. c. 18, s. 5, *post*. See also *Licensing Act, 1874*, sections 18, 19, 20.

(7) As to sale of liquors in *canteens*, the *Army Act, 1875*, Vict. c. 58, s. 174, enacts—(1) When a person holds a license under the authority of a secretary of state or the Admiralty, it shall be lawful for any two justices, within their respective jurisdictions, to grant, transfer, or renew any license for the time being required to enable such person to obtain or hold any license for the sale of any intoxicating liquor, without regard to the time of the year, and without regard to the requirements of any notices, certificates, or otherwise of any Acts for the time being in force affecting such licences; and excise licences may be granted to such persons accordingly. (2) For the purposes of this section the expression "license" includes any license or certificate for the time being required by law to be granted, renewed, or transferred by any justices of the peace, in order to enable any person to obtain or hold any excise license for the sale of any intoxicating liquor.

(8) The sale of methylated spirits is regulated by 18 & 19 Vict. c. 38, s. 3; 24 & 25 Vict. c. 91, ss. 1, 2; 30 & 31 Vict. c. 90, s. 43 & 44 Vict. c. 24. For spirits made up in medicinal preparations, see 16 Geo. 2, c. 8, s. 12.

(9) See several statutes as to dealers referred to in section 3, *ante*, p. 8; also 43 & 44 Vict. c. 20; 45

c. 24 ; 1 Will. 4, c. 51, s. 22 ; 6 Geo. 4, c. 81 ; 48 & 49 Sect. 72.
c. 51.

NOTE.

Where a penalty, such as the excise penalty declared by Will. 4, c. 85, s. 17, is recovered, it will not count as a conviction under section 3, *ante*, p. 7, as regards an increase of punishment there directed : *Re Authers*, 22 Q. B. D. 345 ; 58 M. C. 62 ; 53 J. P. 116 ; 37 W. R. 320.

A recreation room managed or conducted under the authority of the Secretary of State or the Admiralty, may be used for public dancing, music, or other public entertainment of the like kind, and the public performance of stage plays without any license : s. c. 3, s. 7.

3. Licenses as defined by this Act not required for certain retail sales.] A license as defined by this Act shall not be required for—

The sale of wine by retail, not to be consumed on the premises, by a wine merchant in pursuance of a wine dealer's license granted by the Commissioners of Inland Revenue ; or

The sale of liqueurs or spirits by retail, not to be consumed on the premises, by a wholesale spirit dealer whose premises are exclusively used for the sale of intoxicating liquors, in pursuance of a retail license granted by the Commissioners of Inland Revenue, under the provisions of the twenty-fourth and twenty-fifth years of Her present Majesty, chapter twenty-one, intituled "An Act for granting to Her Majesty certain duties of excise and stamps."

exceptions from the necessity of a license or certificate,

A retail license to sell wine obtained by a wine dealer. And a person who takes out a wine dealer's license fulfils the description of a wine merchant : *Palmer v. Thatcher*, 3 Q. B. D. 46 ; 18 P. 213 ; 47 L. J. M. C. 54 ; 26 W. R. 314 ; 37 L. T. (N.S.) 101. A wine merchant may be said to be one who sells goods not

Sect. 73. produced by himself: *Josselyn v. Parson*, L. R. 7 Ex. 187 L. J. Ex. 60; 36 J. P. 455; 25 L. T. 912; 20 W. R. 316. **NOTE.** The license of justices is not required in this case, still the hold the license is subject to the ordinary penalties for keeping open premises during the closing hours set forth in 37 & 38 Vict. c. s. 3: *Martin v. Barker*, 50 L. J. M. C. 109; 45 J. P. 740 L. T. (N.S.) 214. Whether he would be liable as a licensee person to other offences set forth, as, for example, in sect 7, 11, and other sections, no decision of the court as to this yet occurred.

2. A retail *spirit* license by a spirit dealer, provided his premises are used exclusively for the sale of intoxicating liquors. See section 68. The same remark as in the last case applies to this license. As such a spirit dealer does not require a *just* license to sell under his additional retail license, and his premises are not licensed premises within the meaning of section 7, a constable has no right of entry under 37 & 38 Vict. c. 49, s. 1. *Harrison v. Mac L'Meel*, 48 J. P. 469; 50 L. T. (N.S.) 210.

Definitions.

74. *Interpretation of terms, &c.*] In this Act not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them; that is to say:—

“*Intoxicating Liquor Licensing Act, 1828*,” means the 9 Geo. 4, c. 61, intituled “An Act to regulate the granting of licenses to keepers of inns, alehouses, and victualling houses in England,” and includes the Acts amending the same: (a)

“*Wine and Beerhouse Acts*” means the Wine and Beerhouse Act, 1869, 32 & 33 Vict. c. 27, the Wine and Beerhouse Act Amendment Act, 1870, 33 & 34 Vict. c. 29;

“*Intoxicating Liquors Licensing Acts*” means the Intoxicating Liquor Licensing Act, 1828, and the Wine and Beerhouse Acts, *i.e.*, 9 Geo. 4, c. 61, 32 & 33 Vict. c. 27; 33 & 34 Vict. c. 29.

"Intoxicating liquor" means spirits, wine, beer, Sect. 74
porter, cider, perry, and sweets, and any fermented
distilled, or spirituous liquor, which cannot, accord-
ing to any law for the time being in force be legally
sold without a license from the Commissioners of
Inland Revenue : (b)

"License" means a license for the sale of intoxicat-
ing liquors granted by justices in pursuance of the
Intoxicating Liquor Licensing Act, 1828, including
a certificate of justices granted under the Wine and
Beerhouse Acts, and including a license for the
sale of sweets which is hereby authorised to be
granted in the same manner as if sweets were
wine, and including a license for the retail of
spirits granted to a wholesale spirit dealer by the
justices in pursuance of this Act : (c)

"A new license" means a license granted at a general
annual licensing meeting in respect of premises
not theretofore licensed for the sale of intoxicating
liquors : (See also 37 & 38 Vict. c. 49, s. 32.)

"The renewal of a license" means a license granted
at a general annual licensing meeting by way of
renewal : (d)

"The transfer of a license" means a transfer made
in special sessions in exercise of the power granted
to justices by the fourth section of the said Act of
the ninth year of the reign of King George the
Fourth, chapter sixty-one, intituled "An Act to
regulate granting of licenses to keepers of inns,
alehouses, and victualling houses in England" : (e)

"Licensed person" means a person holding a license
as defined by this Act :

- Sect. 74.** “*Licensed premises*” means premises in respect of which a license as defined by this Act has been granted and is in force :
- “*Unlicensed premises*” means premises in respect of which a license as defined by this Act has not been granted or is not in force :
- “*Owner of licensed premises*” means the person at the time being entitled to receive, either on his own account or as mortgagee or other incumbrancer in possession, the rackrent of such premises : (f)
- “*Licensing district*” means the area for which a general annual licensing meeting is held in pursuance of the Intoxicating Liquor Licensing Act 1828 :
- “*Licensing justices*” means the justices having jurisdiction in respect of the grant of new licenses in a licensing district under the last-mentioned Act as amended by this Act : (g)
- “*Licensing officer*” means any officer appointed by the Commissioners of Inland Revenue to issue or superintend the issue of licenses under this Act in any place :
- “*Sale by retail*” in respect of any intoxicating liquor means the sale of that liquor in such quantities as is declared to be a sale by retail by any Acts relating to the sale of intoxicating liquors : (h)
- “*County*” does not include a county of a city or a county of a town, but means any county, riding, parts, division, or liberty of a county having a separate commission of the peace and a separate court of quarter sessions :

“Borough” means a county of a city, county of a **Sect. 74**
town, city, municipal borough, cinque port and its
liberties, town corporate, or other place in which a
general annual licensing meeting is held in pur-
suance of the Intoxicating Liquors (Licensing) Act,
1828, exclusive of a petty sessional division of a
county :

Where a liberty of a county, as defined by this Act,
is not divided into petty sessional divisions, such
liberty shall, so far as respects the provisions of
this Act with respect to the grant of new licenses,
stand in the same position as if it were a petty
sessional division of the county in which it is
geographically situate, or with which it has the
longest common boundary.

“Clerk of the licensing justices” means where the
licensing district is a county or petty sessional
division of a county, the clerk of the petty sessions
for such division ; and where the licensing district
is a county of a city, county of a town, city, muni-
cipal borough, town corporate, or other place not
a county or a petty sessional division of a county,
means the clerk to the justices of such county of a
city, county of a town, city, borough, town corpo-
rate, or place, or other person performing analo-
gous duties to such clerk ; and where there are
more persons than one, in any county, petty
sessional division, or other place filling the office
of clerk of the licensing justices as hereinbefore
defined, the licensing justices shall determine by
which of such persons the register of licenses shall
be kept.

“Town” means any parliamentary or municipal

sect. 74.

borough, Improvement Act district, local government district, or other place having a known boundary, and wherever two or more of the above mentioned places occupy portions of the same a "town" shall be taken to mean such one of the places as is the largest in area; and any premises situate in more than one town shall, for the purposes of this Act, be deemed to be in such one of the towns as is the largest in area (see Act, 11 s. 32, *post*): (1)

"*Local government district*" means any area subject to the jurisdiction of a local board constituted in pursuance of the Local Government Act, 1858:

"*Improvement Act district*" means any area for the time being subject to the jurisdiction of any commissioners, trustees, or other persons intrusted with the execution of any local Act, not being a Turnpike Act or Highways Act, with powers of improving, cleansing, or paving any part of such district:

"*Court of summary jurisdiction*" means any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer by whatever name called, to whom jurisdiction is given by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," in this Act referred to as "The Summary Jurisdiction Act, 1848," and any Acts amendatory of the same:

"*Quarter sessions*" includes general sessions:

[Part here repealed by 46 & 47 Vict. c. 39, Sch.

Secretary of State" means one of Her Majesty's Sect. 74.
principal Secretaries of State.

) The usual name given to the Act 9 Geo. 4, c. 61, was the House Act, which was a much shorter and more convenient one than that here used; but in legal notices and documents the descriptive name here given should be used.

) Spirits is defined, as to degree of strength, in 23 Vict. c. 27, s. 2. Beer is defined in 1 Will. 4, c. 64, s. 32; 32 & 33 Vict. c. 27, s. 2, and see 43 & 44 Vict. c. 20, ss. 2, 40; 48 & 49 Vict. c. 51, *Howorth v. Minns*, 51 J. P. 7; 56 L. T. 316. Beer includes ale, and cider includes perry: 43 & 44 Vict. c. 20, s. 40; 32 & 33 Vict. c. 27, s. 2. Sweets is defined in 33 & 34 Vict. c. 29, s. 3; 43 & 44 Vict. c. 20, s. 40. It was held that justices were not to treat British wine as wine, when a chemist proved it contained a large proportion of alcohol: *Harris v. Jenns*, B. (N.S.) 152; 30 L. J. M. C. 183; 3 L. T. 408; 9 W. R. 36.

) *License.*] The word "license" in this Act includes a certificate granted under the Wine and Beerhouse Acts. It should have been better to have now discontinued the use of the word "certificate" altogether; and it might have been called the justices' license, to distinguish it from the excise license.

It is throughout the notes to this Act the word "certificate" has been used to prevent mistake.

The fact that wine dealers and spirit dealers may sell wines and spirits by retail in some cases without a justices' license has been largely overlooked in this definition of the word "license." And the same oversight has been committed in the definition of licensed person."

Sweets.] The definition of license contains the authority to give licenses for sweets, and these are put on the same footing as wine. If the sale of sweets is for consumption on the premises the justices can refuse a new certificate without reasons; if the consumption is to be off the premises, then the justices must not refuse the certificate, except on the first three grounds mentioned in 32 & 33 Vict. c. 27, s. 8. See the notes to section 69, which apply equally to sweets. Though there may be a separate license for sweets, yet when a wine license is obtained it includes sweets as part thereof: 43 & 44 Vict. c. 20, s. 40.

New license.] This definition has been amended by the Licensing Act, 1874, s. 32, *post*.

Sect. 74. (*d*) *Grant by way of renewal of license.*] The definition of a new license has been amended, and is now contained in the Licensing Act, 1874, section 32. See note to that section. But the former definition meant the same in effect: *Marwick v. Oak*, L. R. 9 Q. B. 509; 38 J. P. 518; 43 L. J. M. C. 169; 30 L. T. 71; 22 W. R. 823.

NOTE.

It is to be observed that a renewal of a license or certificate naturally implies two things. 1. That it is the same person who previously held the license or certificate, and who now applies for the renewal; 2. That the premises are the same, or substantially the same, in both cases. The phrase "renewal of license" however, sometimes popularly used to denote that a person applies for a license or certificate for the same house which another person was previously licensed to use as an alehouse or beerhouse, &c. This distinction, though unimportant, when justices could either grant or renew licenses without any reasons given, will prove to be of considerable importance now that justices must deal very differently with the grant of a new and the renewal of an old license.

The Alehouse Act, 9 Geo. 4, c. 61, did not explain which of the above meanings belongs to the phrase "renewal of a license." As to the Wine and Beerhouse Acts, the words "renewal of certificate" are also left undefined. It is true that as regards the 19th section of the Act, 1869, 32 & 33 Vict. c. 27, it may be taken since 33 & 34 Vict. c. 29, s. 7, that the words "renewal of license" means a continuous renewal of the license in respect of the same house, though different persons may have held the license since 1st May, 1869. That meaning is the one which may be used in applying that 19th section, but it does not follow that it is the meaning for other purposes. An alehouse license is only in operation for one year, when it expires by effluxion of time; so it is as to a certificate under the Wine and Beerhouse Acts. If after the expiration of the license or certificate a new tenant comes in and applies for a license, he must usually apply, not for a renewal, but for a new license. It is true that during the currency of the year there may be a transfer or transmission of a license or certificate, in the various circumstances set forth in the Act 9 Geo. 4, c. 61, s. 14, and extended to the Wine and Beerhouse Acts by 33 & 34 Vict. c. 29, s. 4. If such transferee had held the license or certificate up to the expiration thereof, and seeks again to renew the license, this case will come strictly within the meaning of an application by way of renewal. An opportunity for inquiry into the character of the transferee was given under the transfer clauses of the Alehouse Act, and since 33 & 34 Vict. c. 29, s. 4, also under the Wine and Beerhouse Acts, and it is the same under the Licensing Act, 1872, section 40. And therefore when

transferee has acquired the same or equivalent premises, and legal title to the privileges and duties incident to the holding of a license or certificate which his predecessor held in respect of the same premises, it is a renewal and not a new license or certificate which he applies for at the end of the licensing year. **Sect. 74.**
NOTE.

Renewals not to a licensed person.] Several instances, however, may occur of a renewal being rightly asked for, though a person entitled to ask it has not acquired by transfer the present license. Thus, the Court of Appeal held, in *R. v. Lawrence & Liverpool JJ.*, 11 Q. B. D. 638; 52 L. J. M. C. 114; 49 L. T. (L.) 244; 32 W. R. 20; 47 J. P. 596, that a new tenant who had entered in June, and was in possession at the date of the general annual licensing meeting in September, might apply for a "license to continue," and if he did not so apply, he may be treated as a person "neglecting to apply," so that any succeeding tenant entering after 10th October would be entitled to make an application under Geo. 4, c. 61, s. 14. The effect of this decision seems to be that a license to continue, though not identical with a renewal, may be applied for by an incoming tenant who is in possession at the date of the annual general meeting, for in those circumstances nobody but the tenant in possession would be in a position to do anything. Thus, the Court of Appeal seems in some respects to have treated a renewal as if it were a renewal in respect of the house, whether the person applying was the person holding the license or not. Hence also, where the justices wrongfully refused to renew P.'s license, though no statutory notice of opposition had been served, and P. did not appeal, but would not quit the house till next June, and C., a new tenant, then entered, and at the next general annual meeting in September applied for a renewal, it was held that this was a competent application: *R. v. Market Harborough JJ.*, 51 J. P. 439; 57 L. T. 56; 35 W. R. 734; 56 L. J. L. C. 96.

Where application must be for a new license.] In all other cases than those mentioned it must be a new license or certificate, and not a renewal which is applied for. Thus, where a house had been closed for more than a year owing to difficulties about mortgages and a tenant absconding, so that there had been a break in renewing the license, it was held that, when a new tenant applied, he must apply for a new license: *Ex parte Tabrath*, 9 J. P. 101; 31 L. T. (N.S.) 513. So where a holder forfeited his license in May and nobody applied at the general meeting, but at the next again a new tenant applied, it was held that his application must be for a new license: *Hargraves v. Dawson*, 35 J. P. 342; 4 L. T. 428. So where during rebuilding of the premises no

Sect. 74. license had been granted for three years, it was held that the application must be for a new license: *R. v. Curzon*, L. R. 1 400; 42 L. J. M. C. 155; 37 J. P. 774; 29 L. T. 32; 21 886. And the same is true whenever a holder of a license of the same, for the license ceases entirely at the date of forfeiture: *R. v. West Riding JJ.*, 21 Q. B. D. 358; 52 J. 1 57 L. J. M. C. 103; 36 W. R. 258. On the other hand, a licensed person entitled to take out the usual excise license not done so for a year, but intended to do so next year, was required to apply for was not a new license but a renewal, taking out of an excise license does not affect the substance of application: *Smith v. Hereford JJ.*, *R. v. Smith*, 42 J. P. 2 L. J. M. C. 38; 39 L. T. 604.

NOTE.

Summary as to new and renewed licenses.] The therefore, of the various enactments in the Alehouse Act, a Wine and Beerhouse Acts, and this Act, seems to be as follows.

Where the person applying for a license or certificate has at the time a license or certificate respectively in force in respect of the same premises, whether he acquired such license or certificate at the previous general annual licensing meeting, or its adjournment, or since that time by virtue of transfer on one of the grounds specified in 9 Geo. 4, c. 61, s. 14, and 33 & 34 Vict. c. 4, or if he has not got a transfer but has entered upon possession under one of the grounds specified in 9 Geo. 4, c. 61, s. 14, at the general annual meeting or its adjournment, then he is in the position of one applying for a grant by way of renewal. In all other persons are in the position of applying for a new license or certificate.

Where premises enlarged or altered, if renewal is asked.] In some cases, where the premises have been enlarged by taking in another house, the justices will treat the application as one of renewal if the premises are not materially altered by enlargement: *R. v. Smith*, 31 J. P. 259; 15 L. T. 178. It is always a question of degree, and as to the relative extent of the old premises and the new additions. As a general rule, the right of an owner, incident to all businesses, to extend his premises from time to time, and the enlarged area is for the time being the place of business: *Richards v. Swansea*, 9 Ch. D. 425. If the house includes the curtilage or a piece of ground in front: *R. v. London and Chatham Railway Company*, L. R. 6 Eq. 10. If the licensee were to add several houses to one, the justices would hold that the premises are different, but in general, if a smaller or an equal extent has been added, they will regard this as merely an enlargement of the existing premises, and

premises, and so they will renew the old license, and not a new notice and a new license: *R. v. Raffles*, 1 Q. B. Div. J. P. 68; 45 L. J. M. C. 61; 34 L. T. 180; 24 W. R. 536. The justices specify by metes and bounds the exact of the licensed premises, and there is nothing irregular in it it is doubtful whether this controls the natural right of a licensee to extend his premises: *Stringer v. Huddersfield JJ.*, 40 J. P. 22; 33 L. T. 568; 24 W. R. 141. In one case the justices convicted a licensed person for selling in an extended of his premises, holding that the original license did not extend to all the outhouses, and the court would not interfere, regarding this as usually a question of fact for the justices alone to determine: *Mahon v. Gaskell*, 42 J. P. 583. On the other hand, if a licensed person had added an adjoining house nearly as large as the original premises, and converted the whole into one premises, and sold liquors in the new part, and the licensing justices treated the next application at the general annual meeting as a renewal and not as a new grant, the High Court would not interfere, treating it as a question of fact for the licensing justices alone: *R. v. Justices of Hants*, 44 J. P. 72. See also notes to 32 & 33 Vict. c. 27, s. 19, *post*.

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NOTE.

Transfer of license.] This definition should have included section 14 as well as section 4 of 9 Geo. 4, c. 61, for in reality they are one section. All licenses and certificates can be transferred under the conditions and circumstances set forth in 9 Geo. 4, c. 61, s. 14, *post*, and under some circumstances set forth in 32 & 33 Vict. c. 49, s. 15. And a temporary transfer can in all cases be obtained at petty sessions under 5 & 6 Vict. c. 44,

Owner of licensed premises.] This expression has been defined in Licensing Act, 1874, section 29. See also section 56 of this Act.

Licensing justices.] This expression was used in section 24, now repealed, and section 43. See another use of it in Licensing Act, 1874, section 6, and notes, *post*.

Sale by retail.] The words "sale by retail" had different meanings in different Acts. This clause seems to import that if sale by retail of beer was defined by the Beerhouse Acts, the definition as to beer will apply to all houses which sell beer under this Act. So as to sale of wines, spirits, &c., respectively, it does not mean that "sale by retail" denotes a uniform quantity of all intoxicating liquors. See notes to section 3, *ante*,

Sect. 74. (i) *Town.*] In fixing the valuation qualification of in-door licensed houses which are to be licensed for the first time, the words used in 3 & 4 Vict. c. 61, s. 1, namely, "any town corporate, parish, or place," have been discontinued, and the word "town" substituted, with a definition which seems more correctly applied. The Act 3 & 4 Vict. c. 61, s. 1, is now only in force as to the beerhouses that had certificates for in-door consumption on 10th August, 1872, and for all out-door beerhouses and clubs and houses. See section 45 and notes. This word "town" as used in the Beerhouse Acts must be taken according to the definition in those Acts and not of this Act. And this definition of the word town is repealed by the Licensing Act, 1874, section 33, *post*, and another definition substituted by the same Act, section 32, *post*.

NOTE.

Repeal.

75. *Repeal of Acts mentioned in the second schedule.*] (Part here repealed by 46 & 47 Vict. c. 38, Sched.)

Provided also, that in the case of persons intending to apply for *billiard licenses* under the Act of the eighth and ninth years of the reign of Her present Majesty, chapter one hundred and nine, intituled "An Act to amend the law concerning games and wagers," or for the transfer of such licenses, the same notices shall be given as are by this Act required in the case of licenses as defined by this Act, or as near thereto as circumstances admit; and any person convicted of an offence against the tenor of a billiard license, or of any offence declared by the last-mentioned Act to be an offence against the tenor of a license as defined by this Act shall be punished under this Act in the same manner in all respects as a licensed person within the meaning of this Act is punishable under this Act for suffering any gaming or any unlawful game to be carried on on his premises; and in construing the last-mentioned Act any reference to the Intoxicating Liquor Licensing Act,

*Billiard Licenses.*Sect. 75.

shall be construed to refer to that Act as amended Act.

held that the various new offences and penalties took the passing of this Act on all the current licenses, and were not saved from the operation of the Act by sub-*: Jones v Cooper*, 37 J. P. 613 ; 28 L. T. (N.S.) 496 ; 21 2.

rd licenses.] The Act 8 & 9 Vict. c. 109, s. 10, provided like notices should be given for application for billiard as in case of alehouse licenses. The billiard license billiard tables and bagatelle boards, or instruments used of a like kind. The same section of 8 & 9 Vict. also enacted that transfers of billiard licenses may be at the same transfer sessions as public-house licenses, or 9 Geo. 4, c. 61, ss. 4, 14. The duration of the billiard also the same, those in Middlesex and Surrey ending on , and elsewhere on 10th October. The fees payable by are 5s. for the clerk to the justices, and 1s. for services of . The penalty for demanding or receiving more than fees is 5l.

above 75th section of the Licensing Act, 1872, thus billiard licenses the same notices as for public-house

Therefore, for new grants and transfers the notices are fixed in 32 & 33 Vict. c. 27, s. 7, *post*, and this Act, 1872, s. 40, *ante*, p. 71. There is no notice required als.

Justices have the same absolute discretion as to granting or a billiard license as in the case of public-house licenses, Geo. 4, c. 61, s. 1, *post*.

is no appeal against a refusal to grant a billiard license : *Whitmore JJ.*, 21 J. P. 773 ; *Ex parte Chamberlain*, 8 E & B.

ense prohibits the consumption of excisable liquors on es, and beer is not now an excisable liquor : *Jones v.*, L. R. 3 Q. B. 541 ; 22 L. T. (N.S.) 535 ; 39 L. J. M. C. J. P. 663 ; 18 W. R. 1197. And the same meaning de liquor is preserved in the Inland Revenue Act, 1880, ict. c. 20, s. 47, *post*.

of the billiard license.] At the general annual meeting [or an adjournment of the general annual meeting, or at a special petty session] of Her Majesty's

Sect. 75.

Billiard Licenses.

NOTE. justices of the peace acting for the division [*or liberty, &c., as the case may be*] of —, in the county of —, holden at — the — day of —, in the year —, for the purpose of granting billiard licenses, we, being — of Her Majesty's justices of the peace acting for the said county [*or liberty, &c., as the case may be*] and being the majority of those assembled at the said session hereby authorise and empower A. L., now dwelling at — the parish of —, to keep a house for public billiard playing [*here specify the house*], provided that he [*or she*] put and keep the words "licensed for billiards," legibly printed in some conspicuous place near the door and on the outside of the said house and do not wilfully or knowingly permit drunkenness or disorderly conduct in the said house, and do not knowingly permit the consumption of excisable liquors therein by the persons resorting thereto, and not knowingly suffer any unlawful gaming therein, and do not knowingly suffer persons of notorious bad character to assemble and meet together therein, and do not allow the said house for play, or allow any play therein after one o'clock before eight of the clock in the morning, or keep it open or allow any play therein on Sundays, Christmas Day, or Good Friday, or on any day appointed for a public fast or thanksgiving, but shall maintain good order and rule therein : And this license shall continue in force from the — day of — next, until the — of — then next following, and no longer.

Given under our hands and seals on the day and at the place first written : 8 & 9 Vict. c. 109, Sched.

*Keeping billiard table, &c., without license.] Every room, or place kept for public billiard playing, or where a billiard table or bagatelle board, or instrument used in any game of the like kind, is kept at which persons are admitted to (except in houses or premises specified in any license granted under 9 Geo. 4, c. 61, hereinafter called a victualler's license) shall be licensed under this Act ; and every person keeping such public billiard table or bagatelle board, or instrument in any game of the like kind for public use, without being licensed so to do, and not holding a victualler's license for the house or premises where such billiard table, bagatelle board, or other instrument as aforesaid is kept or used,—and also every person so licensed under this Act, who shall not during the continuance of such billiard license put and keep up the words "*licensed for billiards*," legibly printed in some conspicuous place near the door and on the outside of the house specified in the license,—shall be liable to be proceeded against as the keeper of a common gaming-house, and beside any penalty or punishment to which he may be*

*Billiard Licenses.***Sect. 75****NOTE.**

convicted of keeping a common gaming-house, shall, on conviction of keeping such unlicensed billiard table, bagatelle board, or other instrument as aforesaid, by his own confession, or by the oath of one or more credible witnesses, before any police magistrate or any two justices of the peace, be liable to pay such penalty, not more than 10*l.* for every day on which such billiard table, bagatelle board, or instrument as aforesaid shall be used, as shall be adjudged by the magistrate or justices before whom he shall be convicted, or, in the discretion of the magistrate or justices, may be committed to the house of correction, with or without hard labour, for any time not more than one calendar month; but no person who shall have been summarily convicted of any such offence shall be liable to be further proceeded against by indictment for the same offence: 8 & 9 Vict. c. 109, s. 11.

Offences against the tenor of billiard license.] By 8 & 9 Vict. c. 109, s. 12, and the 75th section of the Licensing Act, 1872, every person licensed under this Act, who shall be convicted, before a police magistrate or two justices acting in and for the division or place in which shall be situated the house kept, or heretofore kept by such person, of any offence against the tenor of the license to him granted, shall be liable to the same penalties and punishments [as if he were a licensed person convicted under the Licensing Act, 1872, section 17]. See notes to Act, 1872, section 17, *ante*, p. 36.

Constable to visit licensed billiard houses.] And it shall be lawful for all constables and officers of police to enter into any house, room, or place where any public table or board is kept for playing at billiards, bagatelle, or any game of the like kind, and so often as such constables and officers shall think proper; and every person licensed under 9 Geo. 4, c. 61, or this Act, who shall refuse to admit, or who shall not admit, any such constable or officer of police into such house, room, or place, shall, on conviction thereof before a police magistrate, or any two justices of the peace, be deemed guilty of an offence against the tenor of his license, whether the same be a billiard license or a victualler's license: 8 & 9 Vict. c. 109, s. 14.

Keepers of billiard tables not to allow play at certain times—penalty.] Every person keeping any public billiard table or bagatelle board, or instrument used in any game of the like kind, whether he be the holder of a victualler's license or licensed under this Act, who shall allow any person to play at such table, board, or instrument, after one or before eight o'clock

Sect. 75.*Billiard Licenses.***NOTE.**

in the morning of any day, or at any time on Sunday, Christmas Day, or Good Friday, or any day appointed to be kept as a public fast or thanksgiving; and every person holding a victualler's license who shall allow any person to play at such table, board, or instrument kept on the premises specified in such victualler's license, at any time when such premises are not by law allowed to be open for the sale of wine, spirits, or beer, or other fermented or distilled liquors, shall be liable to the penalties herein provided in the case of persons keeping such public billiard table, board, or instrument as aforesaid for public use without license, and during those times when play at such table, board, or instrument is not allowed by this Act, every house licensed under this Act, and every billiard room in every house specified in a victualler's license, shall be closed, and the keeping of the same open or allowing any person to play therein or thereat, at any of the times or on any of the days during which such play is not allowed by this Act, shall be deemed in such case an offence against the tenor of the license of the person so offending: 8 & 9 Vict. c. 109, s. 13.

It has been held that this section applies only to persons holding publicans' licenses under 9 Geo. 4, c. 61, and not to beer-house keepers: *Bent v. Lister*, 52 J. P. 389.

It has been held that persons staying as lodgers in licensed premises where there is a billiard table cannot lawfully play at billiards after the hours of closing the licensed premises for sale of liquor, though they are entitled to be supplied with liquor after such hours, and the landlord may be convicted of allowing gaming if he allow them at such hours to play at billiards: *Ovenden v. Raymond*, 40 J. P. 727; 34 L. T. 698.

Appeal by billiard license holder against convictions.]

Any person who shall be summarily convicted under this Act may appeal to the next general or quarter sessions of the peace [part here repealed by 47 & 48 Vict. c. 43, Sched.]; and it shall be lawful for the magistrate or justices by whom such conviction shall have been made to bind over the witnesses who shall have been examined, in sufficient recognizances, to attend and be examined at the hearing of such appeal; and that every such witness on producing a certificate of being so bound, under the hand of the said magistrate or justices, shall be allowed compensation for his or her time, trouble, and expenses in attending the appeal, which compensation shall be paid in the first instance by the treasurer of the county or place, in like manner as in cases of misdemeanour, under the provisions of 7 Geo. 4, c. 64; and in case the appeal shall be dismissed, and the order of conviction affirmed,

reasonable expenses of all such witnesses attending as aforesaid, to be ascertained by the court, shall be repaid to the said insurer by the appellant : 8 & 9 Vict. c. 109, s. 20.
For procedure as to appeal see Licensing Act, 1872, section 52, s. p. 102, and notes.

Sect. 75.**NOTE.**

Application of certain of the preceding Provisions of this Act to Ireland.

76. *Mode of reference to particular provisions Acts.*] A reference to the words forming a heading of any of the provisions of this Act shall be deemed to be a reference to all the provisions under such heading, unless otherwise specially provided.

77. *Application to Ireland of certain provisions of Act, with modifications.*]

78. *Closing of premises in Ireland at certain hours on Sunday, Christmas Day, Good Friday, &c.*]

79. *Recovery and application of penalties in Ireland.*]

80. *Repeal of section 4 of 34 & 35 Vict. c. 88.*]
(Repealed by 46 & 47 Vict. c. 39, Sched.)

81. *Interpretation of "spirit grocer," "excise license," &c., as applying to Ireland.*]

82. *No renewal of license to be granted to spirit grocers in Ireland without certificate of justices.*]

Sect. 83. **83.** *Penalty on spirit grocer in Ireland liquor drunk on or near to the premises.]*

84. *Penalty on evasion of law as to drink on premises of spirit grocer in Ireland.]*

85. *Penalty on internal communication between premises of spirit grocer and house of public resort in Ireland.]*

86. *Limitation of hours during which spirit grocers may sell intoxicating liquors in Ireland.]*

87. *Justices and constables may enter premises of spirit grocer in Ireland during prohibited hours.]*

88. *Provisions as to repeated convictions apply to spirit grocers in Ireland, &c.]*

89. *Application of provisions as to legal proceedings, penalties, &c., in Ireland.]*

90. *No license to be granted to disqualified person or for disqualified premises in Ireland.]*

SCHEDULES to which this Act refers.

Sched.

FIRST SCHEDULE.

(Repealed by Licensing Act, 1874, section 33.)

SECOND SCHEDULE.

NOTE.—This schedule was *repealed* by 46 & 47 Vict. c. 39, ed., but is here retained for convenient reference. Each date and the extent of its repeal is mentioned in the text.

The effect of the repeal was, that it did not revive anything not existing at the date of the repeal, so that the schedule as it stood was a record of the existing law, and shows how the previous statutes were dealt with. See 46 & 47 Vict. c. 39, s. 1.]

1 James 1, c. 7: So much as is unrepealed.

1 Geo. 4, c. 61: Section 6; section 10; section 11; so much section 13 as relates to the form of license; sections 18 and 19; section 20; section 21; section 22; section 23; section 25; section 26; also section 27; section 28; section 29, except in so far as the three last-mentioned sections relate to the *renewal* of licenses or to the *transfer* of licenses under sections 4 and 14 of the same Act; also section 31; section 32; section 33; section 34.

1 Geo. 4 & 1 Will. 4, c. 64: Section 6; section 11; section 13; section 15; section 16; section 17; section 18; section 19; section 20; section 21; section 22; section 25; section 26; section 27; so much of section 30 as incorporates or applies any repealed enactment.

4 & 5 Will. 4, c. 85: Section 4; section 7; section 10; so much of section 11 as incorporates or applies any repealed enactment; section 18; section 22.

2 & 3 Vict. c. 47: Section 41, from “and in the case of any licence” to end of section; section 42; section 43.

3 & 4 Vict. c. 61: Section 10; section 13; section 15; section 17; section 19; also so much of section 21 as incorporates or applies any repealed enactment.

11 & 12 Vict. c. 49: The whole Act so far as it relates to England.

18 & 19 Vict. c. 118: The whole Act.

Sched. 23 & 24 Vict. c. 27 : Section 5 ; section 17 ; section 18 ; section 26 ; section 27 ; section 28 ; section 29 ; section 31 ; sections 32, 33, 34, 35, 36, 37, 38, 41, and 42, so far as such sections relate to the sale of intoxicating liquors or to offences connected therewith ; also section 39 ; section 40.

23 & 24 Vict. c. 113 : Section 41.

27 & 28 Vict. c. 64 : The whole Act, except in so far as it relates to refreshment houses in which intoxicating liquors are not sold.

28 & 29 Vict. c. 77 : The whole Act, except in so far as it relates to refreshment houses in which intoxicating liquors are not sold.

32 & 33 Vict. c. 27 : So much of section 6 as relates to the form of certificate ; section 12 ; section 13 ; section 14 ; section 15 ; section 16 ; section 17 ; section 18 ; so much of section 19 as relates to offences ; section 22.

33 & 34 Vict. c. 29 : Section 5 ; section 6 ; section 7, and "the second and third provisoes" to the end of section 8 ; section 9 ; section 12 ; section 13 ; section 14 ; section 17.

34 & 35 Vict. c. 88 : The whole Act.

LICENSING ACT, 1874.

37 & 38 VICT. CAP. 49.

ACT to amend the Laws relating to the Sale and Consumption of Intoxicating Liquors.

[30th July, 1874.]

WHEREAS it is expedient to amend the Licensing Act, 1872, in this Act referred to as the principal Act:

Be it enacted by the Queen's most excellent Majesty, and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Preliminary.

1. Construction and short title of Act, 35 & 36 **Sect. 1.**
Act. c. 94.] This Act and the principal Act shall, so far as is consistent with the respective tenors of such Acts, be construed as one Act, and may be cited together as "The Licensing Acts, 1872-1874 ;" but this Act may, if necessary, be cited separately as "The Licensing Act, 1874."

2. Commencement of Act.] This Act shall come into operation as to the provisions relating to hours of trading (not being provisions relating to the grant of daily-closing licenses), on the tenth of October one thousand eight hundred and seventy-four, and not

Sect. 2. before, and as to the remainder, immediately on passing of this Act.

(Some words *repealed* by 46 & 47 Vict. c. 39, Sched., and omitted.)

Hours of Closing.

3. *Hour of closing premises licensed for sale of intoxicating liquors.*] All premises in which intoxicating liquors are sold by retail shall be closed as follows (that is to say,)

- (1) If situate within the metropolitan district—
 - (a) On Saturday night from midnight until eleven o'clock in the afternoon on the following Sunday ; and
 - (b) On Sunday night from eleven o'clock until five o'clock on the following morning ; and
 - (c) On all other days from half-an-hour after midnight until five o'clock on the same morning and
- (2) If situate beyond the metropolitan district and the metropolitan police district or in a town in a populous place as defined by this Act ;
 - (a) On Saturday night from eleven o'clock until half-an-hour after noon on the following Sunday and
 - (b) On Sunday night from ten o'clock until five o'clock on the following morning ; and
 - (c) On the nights of all other days from eleven o'clock until six o'clock on the following morning ; and
- (3) If situate elsewhere than in the metropolitan district or the metropolitan police district or in a town or populous place as aforesaid,—

- (a) On Saturday night from ten o'clock until half-an-hour after noon on the following Sunday ; and
- (b) On Sunday night from ten o'clock until six o'clock on the following morning ; and
- (c) On the nights of all other days from ten o'clock until six o'clock on the following morning.

Sect. 3.

Such premises wherever situate shall, save as hereinafter mentioned, be closed on Sunday afternoon from one or half-past two according as the hour of opening shall be one o'clock in the afternoon or half-an-hour after noon until six o'clock.

Such premises wherever situate shall be closed on Christmas Day and Good Friday, and on the days preceding Christmas Day and Good Friday respectively, as if Christmas Day and Good Friday were respectively Saturday, and the preceding days were respectively Sunday, but this provision shall not alter the hours during which such premises shall be closed on Sunday when Christmas Day immediately precedes or succeeds Sunday.

The "metropolitan district" is defined by section 32 and the Schedule, *post*. "Town" and "populous place" are also defined in section 32, *post*.

Under the repealed 24th section of the Act, 1872, the justices of the metropolitan district could vary the hours very considerably both on Sundays and week-days, but under this enactment the hours are fixed both in the metropolitan district and out of it, except that by the 6th section the justices can, in extra-metropolitan districts, turn the period of closing between half-past one and half-past 2 into the period between 1 P.M. and 3 P.M. If they do not vary the hours then this 3rd section fixes the period absolutely for the extra-metropolitan districts as between half-past 12 P.M. and half-past 2 P.M. See section 6 and notes, *post*. Therefore the justices do nothing under section 6 the hours remain as fixed by this section.

As regards Christmas Day and Good Friday, the day preceding which is to be deemed a Saturday, and therefore in the metropolis

Sect. 3.*Closing Hours.*

NOTE. the houses must be closed on the preceding night at midnight in extra-metropolitan districts at 11 P.M. and 10 P.M. according to the population.

Grocers' premises.] Where premises are kept for two different purposes, as, for example, where a house is subdivided into two parts, one for selling liquors and the other for groceries, at the closing hour for liquors the part used for selling liquors is closed by shutters, and all communication with the grocer's shop is cut off, no offence is committed by continuing to sell groceries and other articles in the other part of the premises unless the grocer's shop is kept open merely as a blind for the other purpose. As to which last matter of fact it will be for justices to decide. *Brigden v. Heighes*, 1 Q. B. D. 330; 40 J. P. 661; 45 L. J. M. C. 58; 34 L. T. 242; 24 W. R. 272; *Ex parte Joynt*, 38 J. P. 2. So where the large wooden case in which all the liquors were kept was shut up and locked: *Tassell v. Ovenden*, 2 Q. B. D. 28; 41 J. P. 710; 46 L. J. M. C. 228; 36 L. T. 696; 25 W. R. 60.

Where sold only under excise license.] Where wine and spirits are sold under an excise retail license, though no justice license may be required and is not taken out, these house closing equally apply: *Martin v. Barker*, 50 L. J. M. C. 100; 41 L. T. (N.S.) 214; 45 J. P. 749.

Local customs.] There can be no such thing as a local custom, as, for example, Mid-Lent Sunday, dispensing with the prohibitions here laid down: *Stacy v. Milne*, 39 J. P. 103.

Six-day licenses.] The case of the six-day licensed houses has been entirely forgotten in this section. Nothing was said expressly in the Act, 1872, section 49, as to how these houses were to be situated as to Christmas Day and Good Friday; as to Sunday these houses were to be closed the whole day. This section says that premises wherever situated shall be closed on Christmas Day and Good Friday as if these days were Sunday and they cannot be treated as Sunday unless these six-day premises are closed the whole day. The legislature probably intended to provide for the six-day houses, and the question is what is the result of the enactments. If this section is confined to the seven-day houses, then there will be no enactment requiring the six-day houses to close on Christmas Day or Good Friday any more than week days. If this section had said, "as if Christmas Day and Good Friday were respectively Sunday as above defined" then it would have made the six-day Christmas Day and Good Friday the same as the seven-day Christmas Day and Good Friday.

Closing Hours.

Sect. 3

NOTE

y. There being, however, no such words as "*as above*
ed," and nothing to limit the general words "shall be closed
Christmas Day and Good Friday were Sunday," it seems to
v that the six-day houses must be closed the whole of
tmas Day and Good Friday, the same as on Sunday. Never-
ss, owing to the apparent hardship, if it be a hardship, or at
the oversight, justices may fairly use their discretion as to
they will treat this enactment as regards the six-day houses,
may refuse to convict, thereby leaving it to those interested
ke the opinion of the High Court.

Welsh Sunday Act.] Under the *Welsh Sunday Act*, 44 & 45
c. 61, *post*, it has been held that that Act did not interfere
x the previous law as to Christmas Day or Good Friday, what-
t that may be, but only dealt with Sunday: *Forsdike v. Col-*
oun, 11 Q. B. D. 71; 49 L. T. 136; 47 J. P. 393.

Computation of time.] Formerly the justices were not bound
ollow Greenwich time, but followed the medium time of the
ce, as in *Curtis v. Marsh*, 3 H. & N. 866; 23 J. P. 663; 28
J. M. C. 36. But now, whenever any expression of time
urs in any Act of Parliament, deed, or other legal instrument,
less it is otherwise specifically stated, this shall mean in Great
tain Greenwich time: 43 & 44 Vict. c. 9, s. 1.

Sunday public entertainments.] A house, room, or other
ce which shall be opened or used for public entertainment, or
usement, or for publicly debating on any subject whatsoever
on any part of the Lord's Day, called Sunday, and to which
sons shall be admitted by the payment of money or by tickets
d for money, shall be deemed a disorderly house or place, and
keeper, &c., shall forfeit 200*l.* for every day so opened or used
such person as shall sue for the same; and the person managing
conducting, &c., shall forfeit 100*l.*, and every doorkeeper,
vant, &c., shall forfeit 50*l.*: 21 Geo. 3, c. 49, s. 1. Any per-
behaving as master, mistress, or manager, shall be deemed
keeper, though not the real owner, and each of several joint
ners shall be deemed the keeper. And any house, room, or
ce where tea, coffee, or other refreshment of eating or drinking
the Lord's Day at any greater prices than the usual prices on
er days shall be deemed a house, &c., to which persons are
mitted on payment of money, though no money is taken for
mittance: *Ibid.* s. 2. Persons advertising such places are also
ble to 50*l.* penalty: *Ibid.* s. 3. Actions for penalties to be
ought within six months: *Ibid.* s. 5.

Where only sacred music is performed the place is not subject to

Sect. 3. this Act : *Barter v. Langley*, L. R. 4 C. P. 21 ; 38 L. J. M. C. 32 J. P. 803. But an aquarium, where a brass band plays, is within the Act : *Terry v. Brighton Aquarium*, L. R. 10 Q. B. 39 J. P. 519 ; 44 L. J. M. C. 173 ; 32 L. T. 458 ; *Warr v. Brighton Aquarium*, L. R. 10 Ex. 291. A verdict in an action by a friendly informer cannot be set up as a defence : *Girdlestone v. Brighton Aquarium*, 4 Ex. D. 107 ; 43 J. P. 428.

NOTE.

The Crown may remit the whole or any part of the penalties incurred under this Act : 38 & 39 Vict. c. 80, s. 1.

4. Exemptions as to theatres repealed. exemption from the above-mentioned hours of closing shall not be granted in respect of premises in the neighbourhood of a theatre, for the accommodation of persons attending the same. (Part of this section repealed 46 & 47 Vict. c. 39, Sched.)

The words in the 26th section of the Licensing Act, 1872, p. 50, hereby repealed, have been altered in that section in the way pointed out by this section. See notes to that section p. 52.

5. Exemptions as to beerhouses.] The grant of an order of exemption under the said twenty-sixth section amended as aforesaid may be made to any person licensed to sell beer or cider by retail, to be consumed upon the premises, as well as to any licensed victualler or licensed keeper of a refreshment house.

Further exemptions as to beerhouses.] The grant of a license under the twenty-ninth section of the principal Act may be made to any person licensed to sell beer or cider by retail, to be consumed upon the premises, as well as to any licensed victualler or keeper of a refreshment house in which intoxicating liquors are sold.

The 26th and 29th sections of the Licensing Act, 1872, pp. 50, 55, have been altered in the way pointed out in this section. See the notes to those sections.

power to vary on Sunday afternoon hours **Sect. 6.**
g premises for sale of intoxicating liquors.]

standing anything in this or in any local Act
 l, the licensing justices may, if they think fit,
 its premises in which intoxicating liquors are
 on situate in any place beyond the metropolitan
 for the purpose of accommodating the hours of
 on Sunday, Good Friday, and Christmas Day
 ours of public worship in such place, by order
 at such premises shall remain closed until one
 n the afternoon instead of half-an-hour after
 d in that case such premises shall be closed in
 noon from three until six o'clock, instead of
 f-past two until six o'clock.

order made by the licensing justices under this
 shall not come into operation until the expira-
 one month after the date thereof, and shall be
 d in such manner as the licensing justices
 ad shall be in force until the same is revoked ;
 nse of any such advertisement may be defrayed
 manner as the expenses of advertising the
 of such justices are defrayed.

tion gives a discretion to the licensing justices to alter,
 -hour, the closing of premises on one part of Sunday,

Day, and Good Friday, but not on public fasts or
 ing days. The discretion can only be exercised in one
 ily, by turning half-past 12 P.M. into 1 P.M. No inter-
 ime can be fixed on ; it must be 1 P.M. or nothing.
 io necessity for saying in the order that the houses shall
 P.M., for that will follow as a matter of course both by
 and this section. The purpose of altering the hours is
 be for accommodating the hours of closing to the hours
 worship, but that is a vague phrase and cannot be
 , limit the discretion of the justices.

held that where a penalty was formerly put on opening
 e hours of divine service, there could be no conviction if

- Sect. 6.** there was no divine service: *R. v. Knapp*, 2 E. & B. 447; 23 M. C. 139; 17 J. P. 599. But under this and the 3rd section penalty is put on opening during fixed hours subject to the variations made in this section.
- NOTE.**

How order is to be made.] In the corresponding enactment in the 24th section of the Act, 1872, now repealed, the justices could only make an order altering the hours for closing a general annual licensing meeting or an adjournment, and giving twenty-one days' notice, but nothing is said in this section either as to the giving of any preliminary notice or as to the mode of making the order. This gives rise to a difficulty. As no mode is specified, the natural interpretation is that the justices make the order at any time and are not bound to give any preliminary notice. As, however, it is left to the discretion of the justices they will no doubt exercise that discretion much in the same manner as they did under the Act of 1872, by giving some preliminary notice, and also hearing parties on the subject if they desire it. Probably the legislature thought the power of alteration was so trifling in extent that it was not necessary to prescribe conditions, more especially as the time of public worship is usually fixed in each locality, and therefore it is rather a matter of arithmetic in each case than of public policy. And as the time of public worship may vary in each district, it seems compulsory for the justices to alter the hours in one part of the district if not in another part. When the order is made it is not to come into force till the expiration of one month after the date of the order. A better opinion seemed to be that they could not make an order before the 10th October, 1874. Month means calendar month: 13 Vict. c. 21, s. 14.

And the justices have no discretion as to when the order comes into force. The mode of advertising the order is left to the discretion of the justices, but should be such as to give notice to all the people in the district affected.

Who are licensing justices.] The order altering the hours can only be made by the licensing justices, who, by the 74th section of the Licensing Act, 1872, are "the justices having jurisdiction in respect of the grant of new licenses in a licensing district, under 9 Geo. 4, c. 61, as amended by this Act." There is some ambiguity in this definition, since the justices now having jurisdiction with regard to new licenses are divided into two bodies, the licensing justices, whom must join in every new grant. But the better construction is, that the justices who are to make the order to vary the hours are not the confirming body, but the body who initiate the order. The confirming body have no jurisdiction to initiate a new

et can only veto or assent to a new grant already and hence have no more jurisdiction in respect of new the High Court might have in some cases when, by *mandamus*, that court may treat a new grant as no he confirming justices are not licensing justices, then, the county justices are the justices to make the order. having ten justices it is the borough licensing com- in boroughs with less than ten justices it is the tices who alone can make the order. This construc- to follow from the words "new grant," and the last ie above definition of licensing justices, namely, "as this Act." If these words had been omitted from m then in all cases it would have been the whole body

But as the Act of 9 Geo. 4, c. 61, is to be taken as e., by turning the whole body into a more limited oughs having ten justices, this implies the distinction and the Licensing Act, 1872, section 43, and this Act, confirm it. Though, however, this seems to be the struction, yet the law officers of the Crown, in 1873, have given their opinion that "licensing justices" whole body of justices in all cases. See 37 J. P. 639.

Sect. 6.**NOTE.**

early closing licenses.] Where, on the occa- application for a new license, or the removal l of a license which authorises the sale of any ig liquor for consumption on the premises, ant applies to the licensing justices to insert use a condition that he shall close the premises of which such license is or is to be granted earlier at night than that at which such pre- dld otherwise have to be closed, the justices t the said condition in such license.

der of a license in which such condition is [in this Act referred to as an *early closing* all close his premises at night one hour earlier ordinary hour at which such premises would under the provisions of this Act, and the pro- this Act and the principal Act shall apply to

Sect. 7. the premises as if such earlier hour were the hour which the premises are required to be closed.

The holder of an early closing license may obtain from the Commissioners of Inland Revenue any license granted by such commissioners which he is entitled to obtain in pursuance of such early closing license, on payment of a sum representing six-sevenths of the amount which would otherwise be payable by him for a similar license not limited to such early closing as aforesaid. In calculating the six-sevenths, fractions of a penny shall be disregarded.

The notice which a licensed person is required to fix in section eleven of the principal Act to keep painted on his premises shall, in the case of an early closing license, contain such words as the justices may order for giving notice to the public that an early closing license has been granted in respect of such premises.

This section is an imitation of the 49th section of the Licensing Act, 1872, as to six-day licenses, though the words are slightly altered. The application cannot be refused by the justices; they have only power to grant it on an application for a new license or renewal of an old license, and cannot grant it on a transfer of a license as can be done with reference to a six-day license.

This section, as well as the 49th section of the Act, 1872, is founded on the mistaken notion that a license holder cannot use his premises at any hour he thinks proper, and all the remarks on that subject in the notes in section 49 of the Act, 1872, p. 89, apply to this section.

As, however, the courts have decided that when once a license holder has asked for the six-day condition to be inserted in his license, the justices can never afterwards be bound to omit the condition requested, on future renewals, the same rule will apply to early closing licenses: *R. v. Crewkerne JJ.*, 21 Q. B. D. 85; 52 J. F. 57 L. J. M. C. 127; 60 L. T. 84; 36 W. R. 629.

8. Remission of duty in case of six-day early closing license.] A person who takes a

license containing conditions rendering such license a **Sect. 8.**
 day license, as well as an early closing license,
 will be entitled to a remission of two-sevenths of the
 duty.

The duties upon retailing liquors are now regulated by the
 Land Revenue Act, 43 & 44 Vict. c. 20, s. 43, *post*.

**9. Penalty for infringing Act as to hours of
 closing.]** Any person who—

During the time at which premises for the sale of
 intoxicating liquors are directed to be closed by or
 in pursuance of this Act, sells or exposes for sale
 in such premises any intoxicating liquor, or opens
 or keeps open such premises for the sale of intoxi-
 cating liquors, or allows any intoxicating liquors,
 although purchased before the hours of closing, to
 be consumed in the premises,—

shall, for the first offence, be liable to a penalty not
 exceeding ten pounds, and for any subsequent offence,
 a penalty not exceeding twenty pounds.

This enactment overrules all local customs : *Stacy v. Milne*, 39
 P. 103.

This section is in substantially the same words as those used in
 the 24th section of the Licensing Act, 1872, now repealed, except
 that the words are introduced, “although purchased before the
 hours of closing.” When the liquor is purchased before the
 hours of closing, but not to be consumed on the premises, there
 seems to be no offence, and customers may call for liquor after
 closing hours, if previously purchased.

The offence of selling during prohibited hours is different from
 that of keeping open the premises for the sale of liquor during
 such hours, and the evidence which might be sufficient to prove
 one offence, may be insufficient to prove the other. Great care
 is therefore required in selecting the proper clause under which to
 proceed. A keeper of a licensed house was not precluded by
 the former Acts from having friends as guests during the pro-
 hibited hours, and supplying them was neither selling nor keeping

Sect. 9. open the house for sale : *Overton v. Hunter*, 23 J. P. 808 ; 11
 360. But under this section the consumption of liquor *previ*
NOTE. purchased is not to be consumed on the premises after the cl
 hour—at least in all cases as between an ordinary customer
 the license holder. A gift of liquor during those hours, i
 gift be clearly established, was, however, formerly not held
 within the penalty : *Petherick v. Sargent*, 26 J. P. 135 ; 61
 48. And this exception is now expressly recognised and exte
 by the 30th section of this Act. But a barter may be treat
 in the nature of a sale in many cases. See Act, 1872, sectio
ante, p. 115. In ascertaining the hour, the justices were not bo
 follow Greenwich time : *Curtis v. Marsh*, 23 J. P. 663 ; 3 H.
 365 ; 28 L. J. Exch. 36. But now Greenwich time is men
 all statutes and deeds in Great Britain, if not stated to the
 trary : 43 & 44 Vict. c. 9. A conviction should state d
 which offence is found, as this may affect future consequen
 proceedings against the licensed person. See *Newman v.*
shye, 10 A. & E. 11 ; 2 P. & D. 340.

Selling or keeping open.] The following cases illustra
 distinction between selling and keeping open :—

In *Tennant v. Cumberland*, 1 E. & E. 401 ; 23 J. P. 57 ;
 beerhouse keeper, was charged with opening his house fo
 sale of beer before a certain hour on Sunday. The eviden
 that the door was shut at twelve on Saturday night, but
 two on Sunday morning a constable saw the beerhouse l
 and another man drinking ale inside, and soon afterwar
 man came out. There was no proof of selling beer, an
 Court of Queen's Bench held there was no evidence of the
 of keeping open his house, though there was some of sellin
 during the time. In *Cates v. South*, 23 J. P. 739 ; 1 L. T. 3
 alehouse keeper was charged with keeping open the house f
 of spirits during the prohibited hours. The only eviden
 that guests remained in the house after the hour of closin
 there was no selling of liquor after the hour of closing. Th
 held there was no evidence of keeping open, and that an al
 keeper was not bound to turn his guests out when the clock
 twelve. In *Pearse v. Gill*, 41 J. P. 742, some country farm
 met to transact business as to letting some grass field
 remained after the hours of closing, the outer door being
 and the court held there was evidence to support a convict
 keeping open. In *Thompson v. Greig*, 34 J. P. 214, an al
 keeper was charged with opening his house in prohibited
 The door was kept partly open. During the prohibited
 some men were found inside with glasses before them and
 and the court held that this was some evidence to supp

In *Jefferson v. Richardson*, 35 J. P. 470, an alehouse was charged with opening and keeping open on Sunday. There were seen to come out of a side door, though the front door was shut, but there was no evidence that liquor had been sold during prohibited hours. It was held there was no evidence to sustain the charge. In *Brewer v. Shepherd*, 36 J. P. 373, a beer-keeper was charged with keeping his house open. A man came in to go into the house after the hour of closing, and to come out with a bottle of beer. It was explained that he had only called before the hour of closing and paid for the beer, went to get shaved, and then returned to fetch the beer. The justices, disbelieving the explanation, convicted, and the Court of Queen's Bench held there was some evidence to support the conviction, and so affirmed it. A constable entering during prohibited hours found two men secreted, one having a pot of beer in his hand; the outer doors were shut, and the men refused to enter; held, some evidence of opening the house for sale. *Finch v. Blundell*, 5 L. T. 672; 26 J. P. 71. During prohibited hours the street door was found open, and men, not sailors or travellers, drinking inside, but there was no evidence as to whether the liquor was sold; held, some evidence of keeping open for sale: *Smith v. Vaux*, 6 L. T. 46; 26 J. P. 134. See also notes to section 3, *ante*, p. 150.

Sect. 9.

NOTE.

[*Public-house license and grocers' license.*] Where premises have no justices' license for the sale by retail of liquors, they are nevertheless subject to the closing hours specified in Act, section 3, and notes, *ante*, p. 148. And where grocers and others carry on other business, the premises do not require to be licensed so far as the other business is concerned. See notes to section 3, *ante*, p. 150.

10. *Saving as to bonâ fide travellers and persons.*] Nothing in this Act or in the principal Act enacted shall preclude a person licensed to sell any intoxicating liquor to be consumed on the premises from selling such liquor at any time to *bonâ fide* travellers or persons lodging in his house: Provided that no person holding a six-day license shall sell any intoxicating liquor on Sunday to any person whatever not lodging in his house.

provisions of this Act or the principal Act relating to the sale of intoxicating liquor, such person (in this section referred to as the defendant) fails to prove that the person to whom the intoxicating liquor was sold (in this section referred to as the purchaser) is a *bonâ fide* traveller, but the justices are satisfied that the defendant truly believed that the purchaser was a *bonâ fide* traveller, and further that the defendant took all reasonable precautions to ascertain whether or not the purchaser was such a traveller, the justices shall dismiss the case as against the defendant, and if they think that the purchaser falsely represented himself to be a *bonâ fide* traveller, it shall be lawful for the justices to direct proceedings to be instituted against such purchaser under the twenty-fifth section of the principal Act.

A person for the purposes of this Act and the principal Act shall not be deemed to be a *bonâ fide* traveller unless the place where he lodged during the previous night is at least three miles distant from the place where he demands to be supplied with liquor.

p. 47. And there is no clear limit to the hours of closing, at any time during day or night there may be persons waiting at the station, so that strictly speaking no hours of closing are defined. The exemption of railway travellers arriving and departing from the station was already established. Thus it was held that persons supplied ten minutes before the train started were travellers. It was also held that the fact of two non-travellers being amongst other travellers supplied, was not of itself an offence: *Fisher v. Howard*, 34 L. J. M. C. 42; 11 Q. B. 373; 29 J. P. 246; 13 W. R. 145; *Copley v. Burton*, L. R. 3 P. 489; 39 L. J. M. C. 141; 22 L. T. 888. This express exemption extends to travellers whether living near the railway station or not, if they have just arrived from or are about to start from such station. The distance of the journey by railway is immaterial. And the words "persons arriving at or departing from such station by railroad" are obviously wider than the ordinary word "travellers."

Sect. 10.

NOTE.

[*sale of liquor to travellers and lodgers.*] The exemption from the penalty on the ground of serving a traveller is confined to houses licensed to sell liquor "to be consumed on the premises;" and keepers of houses licensed to sell liquor not to be consumed on the premises are not mentioned, so that they cannot claim any exemption. The question as to who was a traveller within the meaning of the exemption depended very much on his distance from home, and the courts had held that a person walking driving two-and-a-half miles from home sufficiently comes within the description of a traveller: *Peplow v. Richardson*, 33 P. 407; L. R. 4 C. P. 168; 17 W. R. 410. Whether business or pleasure is the object of the traveller is wholly immaterial: *Wainson v. Sellers*, 5 C. B. (N.S.) 442; 28 L. J. M. C. 12; 23 J. P. 373; *Taylor v. Humphries*, 30 L. J. M. C. 242; 10 C. B. (N.S.) 1; 28 J. P. 793; 9 W. R. 705; 4 L. T. 514; though a person going a short distance for the sole purpose of getting drink was held not to be a traveller.

In any proceeding against the keeper of a licensed house for supplying liquor to persons during the prohibited hours, it was held in *Roberts v. Humphreys*, 42 L. J. M. C. 147; 29 L. T. 387; 13 W. R. 885; 38 J. P. 135; L. R. 8 Q. B. 483, that it lay on the defendant to prove that the person supplied was a traveller. However, the stranger, being unknown to the housekeeper, asked and answers that he is a traveller, and states the place he slept at on the previous evening, and there is no reason for doubting him, that will be enough to justify the supply of refreshment.

Sect. 10.**NOTE.**

Where about sixty persons were found sitting in an alehouse in prohibited hours, let in at a back door, of whom three travelled four miles, but had sat more than two hours, all the justices of the company being travellers, it was held the justices may fairly draw the inference that all the people were not bona fide travellers: *Gallimore v. Goodall*, 38 J. P. 597. But where a large number of supposed excursionists were served near a railway station, and one or two persons living a mile off were served without the license holder being aware who they were, the court held there was no evidence of the offence: *Watt v. Glenister*, 32 J. P. 181; 32 L. T. 856. And where one or two non-travellers are among travellers supplied this will not justify a conviction in the absence of the evidence of intention: *Peache v. Colman*, L. R. 1 C. P. 324; 35 L. J. M. C. 118; 14 W. R. 439.

The three mile limit.] By the latter part of this section a person shall now be deemed a traveller unless he is three miles from his place of sleeping on the previous night. And it has been decided that the three miles are to be measured by the nearest public thoroughfare, whether by land or water. Thus where a person was sailing in a boat across a public navigable lake or arm of the sea, the distance would be less than three miles, while round by land it would be eight miles the landlord would be liable for serving such traveller, for the way by sea was within the prohibited distance: *Coulbert v. Troke*, 1 Q. B. D. 1; 40 J. P. 533; 45 L. J. 7; 33 L. T. 340; 24 W. R. 41. Nothing is said as to the length of time that has elapsed since the journey began. Though, however, the person slept three miles off the previous night, it does not follow that he is entitled to be served, the justices having to find whether he had come to the place for the sole object of obtaining the liquor, and this may depend on the interval of time between the sleeping and the application. If the lodging-place includes the traveller's own or any friend's house, and is not confined to a lodging-house; otherwise an objection would arise.

The mere neglect of a servant, contrary to his or her instructions, to ask if the person supplied was a traveller, will not render the keeper of the house liable: *Copley v. Burton*, L. R. 5 C. P. 22; 22 L. T. 888; 39 L. J. M. C. 141. But it will depend on whether the servant was a manager of that department of the business: *Bond v. Evans*, 21 Q. B. D. 249; 52 J. P. 613; 57 L. J. 105; 59 L. T. 411; 36 W. R. 767, and see notes to Act, ss. 16, 17.

A lodger in the licensed premises is not allowed to play billiards after the closing hour for sale of liquors: *Owen v. Raymond*, 34 L. T. 698; 40 J. P. 727; see *ante*, p. 142; and

allowed to carry on gaming: *Hare v. Osborne*, 34 L. T. 294; **Sect. 10.**
 P. 759. But there is nothing to prevent a lodger or traveller
 taining his friends, so long as there is no selling to such
 da, and the lodger pays for them: *Pine v. Barnes*, 20 Q. B. D.
 52 J. P. 199; 57 L. J. M. C. 28; 58 L. T. 520; 36 W. R.
NOTE.

the person falsely represents himself to be a traveller or
 r, he will, under section 25 of the Licensing Act, 1872, incur
 alty of 5*l*. See notes to that section.

1. Hours of closing night-houses.] Whereas by
 Act of 27 & 28 Vict. c. 64, it is provided that no
 on within the limits of that Act shall open or keep
 any refreshment house, to which that Act so far as
 unrepealed applies, or sell or expose for sale or
 sumption in any such refreshment house any refresh-
 ts or any article whatsoever between the hours of
 and four o'clock in the morning: And whereas it is
 edient to amend the provisions of the said Act: Be
 herefore enacted that the said Act, so far as it is
 repealed, shall be construed as if there were sub-
 ited therein for the hour of one o'clock in the
 ning the hour of the night or morning at which
 mises licensed for the sale of intoxicating liquors by
 il situate in the same place as such refreshment
 se are required to be closed, and as if the whole of
 gland were within the limits of the Act, and as if the
 ession "district" in the Act included any place in
 ich such refreshment house is situate.

This section relates to the Night-house Closing Act (27 & 28
 t c. 64), which was confined to the metropolis and certain
 oughs, and which was repealed by the Licensing Act, 1872, as
 ouses licensed to sell intoxicating liquors. See the Act, *post*.
 s Act is now extended to England and Wales, and no night-
 se is to be open after the prohibited hours for licensed houses,
 till 4 A.M. following.

Records of Conviction and Penalties.

Sect. 12. **12.** *Mitigation of penalties.*] When any person holding a license under this or the principal Act is convicted of any offence against this or the principal Act, or against any of the Acts recited or mentioned therein, the court may not, except in the case of a first offence, reduce the penalty to less than twenty shillings, nor shall the penalty, whether of excise or police, be reduced in any case to less than the minimum authorised by any other Act.

This section repealed 35 & 36 Vict. c. 94, s. 67, and in substitution thereof allows justices on a first offence committed after the Act to reduce the penalty to any amount, except where any other Act forbids it. The Excise Acts prevent a penalty for a second offence being mitigated to less than one-fourth: 7 & 8 Geo. 4 c. 53, s. 78; 2 & 3 Vict. c. 71, s. 35; *Murray v. Thompson*, 11 J. P. 70; 22 Q. B. D. 142; 60 L. T. 151.

The Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49, s. 4) gave power to mitigate any penalty for a first offence; and, by section 53, extended that Act to inland revenue proceedings.

13. *Record of convictions on licenses.*] When any licensed person is convicted of any offence against the principal Act which by such Act was to have been or might have been indorsed upon the license, or of any offence against this Act, the court before whom the offender is brought shall cause the register of licenses in which the license of the offender is entered, or a copy of the entries therein relating to the license of the offender, certified in manner prescribed by section fifty-eight of the principal Act, to be produced to the court before passing sentence, and after inspecting the entries therein in relation to the license of the offender, or such copy thereof as aforesaid, the court shall declare, as part of its

tence, whether it will or will not cause the conviction **Sect. 13.**
 : such offence to be recorded on the license of the
 offender, and if it decide that such record is to be made,
 the same shall be made accordingly.

A declaration by the court that a record of an offence
 to be made on a license shall be deemed to be part of
 the conviction or order of the court in reference to such
 offence, and shall be subject accordingly to the jurisdic-
 tion of the court of appeal.

A direction by the court that a conviction for an
 offence is to be recorded on the license of the offender
 shall, for the purposes of the principal Act, be deemed
 equivalent to a direction or requirement by the Act that
 such conviction is to be recorded; and all the provisions
 of the principal Act importing that convictions are
 required or directed by the Act to be recorded on the
 license of an offender shall be construed accordingly.

This section removes the distinction contained in the Licensing
 Act, 1872, between certain convictions which were recorded by
 operation of law and those which were recorded only by the
 exercise of a discretion on the part of the justices. Of the first
 class were sections 5 and 6 of the Act, 1872; of the second were
 sections 13, 14, 16, 17, 28. This section puts them both on the
 same footing in future, and leaves it to the discretion of the
 justices in all cases to order the conviction to be recorded. But
 those convictions which were recorded by operation of law since
 the Act of 1872, and before the Act of 1874, will keep their place
 in the license and on the register, subject to the qualification
 specified in Act, 1872, s. 32, *ante*, p. 60, as to increasing the
 penalty.

The corresponding parts of those sections referred to are ex-
 pressly repealed by this Act, section 33, and there would, there-
 fore, be no power now in the justices at all to record any of those
 convictions if it were not for the words in the first part of this
 section, which restores the power. The power to record extends
 now to all the offences under this Act.

The part of this section as to the court ordering the register of
 licenses or copies of entries to be produced, seems merely directory,

Sect. 13. and is not a condition precedent to their causing a conviction to be recorded. The court is to declare as part of its ~~own~~ ^{NOTE.} whether each of those offences is or is not to be recorded; such declaration is only deemed part of the conviction or order, and the court resolves that the conviction shall be recorded. The register referred to is regulated by Act, 1872, s. 36, *ante*, p. 111, and the register is, by Act, 1872, s. 58, *ante*, p. 111, admissible evidence of the matters stated therein.

In leases of licensed houses it is sometimes stipulated that the tenant shall do nothing that will affect, lessen, or make void the license. In such cases if the tenant has been convicted, but the justices have not ordered the convictions to be recorded, the tenant will not have committed a breach of his covenant; but it will be different if the convictions shall be recorded: *West Knott*, 1 Ex. D. 265; 40 J. P. 788; 35 L. T. 121; 45 L. J. Ex. 24 W. R. 1004.

14. *Record of conviction for adulteration*

Where a licensed person is convicted of any offence against the provisions of any Act for the time being in force relating to the adulteration of drink, such conviction shall be entered in the proper register of licenses, and may be directed to be recorded on the license of the offender in the same manner as if the conviction were for an offence against this Act, and when so recorded shall have effect as if it had been a conviction for an offence against this Act.

This section replaces sections 19, 20, 21, 22 of the Licensing Act, 1872, which are repealed by this Act, section 33. The offence of adulteration of liquors will be dealt with under the Sale of Food and Drugs Act, 1875, 38 & 39 Vict. c. 63; and 42 & 43 c. 30.

Sale of food not of the proper nature, substance, quality.] No person shall sell to the prejudice of the public health any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchase, under a penalty not exceeding 20l.; provided that an offence shall not be deemed to be committed under this section in the following cases; that, is to say,

(1) Where any matter or ingredient not injurious to health

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been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof: 38 & 39 Vict. 63, s. 6.

ling articles with label.] Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of any article of food or a drug mixed with any matter or ingredient injurious to health, and not intended fraudulently to increase the bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed: 38 & 39 Vict. c. 63, s. 8.

Any inspector or police constable may procure a sample and send the same to the analyst of the district: 38 & 39 Vict. c. 63, s. 13. The person purchasing is forthwith to notify to the seller or his agent his intention to have the same analysed by the analyst, and shall offer to divide the article into three parts to be separated and sealed up. *Ibid.* s. 14. If the inspector or constable shall apply to purchase any article of food or drug to be sold by retail and tender the reasonable price, if the seller exposing the same refuse to sell he shall be liable to a fine not exceeding 10*l.*: *Ibid.* s. 17. The certificate of the analyst is *prima facie* evidence as to the facts therein stated: *Ibid.* s. 21. The seller may, in defence, prove that the article is genuine as he bought it and that he has a written warranty with him: *Ibid.* s. 25.

Adulteration of liquors.] The Sale of Food Act, 1879, 42 & 43 Vict. c. 30, s. 6, now enacts that in determining whether an offence has been committed under section 6 of the Act 38 & 39 Vict. c. 63, by selling to the prejudice of the purchaser spirits not of the strength rated otherwise than by the admixture of water, it shall be a defence to prove that such admixture has not reduced the strength of the spirits more than twenty-five degrees under proof, for brandy, gin, or rum, or thirty-five degrees under proof for gin. Previous to 1879 the following cases were decided:—In *Pashler v. Mill*, 41 J. P. 136; 35 L. T. 862, a publican sold a bottle of gin without specifying any quality. When analysed it contained 44 per cent. water. The court held there was evidence to support a conviction for unlawfully selling gin not of the strength of substance, and quality demanded. So where the gin was below proof: *Webb v. Knight*, 2 Q. B. D. 530; 46 L. J.

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NOTE. M. C. 264 ; 26 W. R. 14 ; 41 J. P. 726 ; 36 L. T. 791. In and case of *Sandys v. Small*, 3 Q. B. D. 449 ; 42 J. P. 550 ; 47 L. M. C. 115 ; 39 L. T. 118 ; 26 W. R. 814, the publican stuck a notice in his house in the smoke-room and bar, "all spirits here are mixed," and the court held that as the purchaser bought it with his eyes open, though it contained 30 per cent. of water, offence was committed : *Gage v. Elsey*, 10 Q. B. D. 518 ; 47 J. 391 ; 48 L. T. 226 ; 52 L. J. M. C. 44 ; 31 W. R. 500.

Prohibition against adulteration of beer.] (1) A brewer of beer for sale shall not adulterate beer, or add any matter or thing thereto (except finings for the purpose of clarification or of any matter or thing sanctioned by the Commissioners of Inland Revenue) before the same is delivered for consumption, and a beer found to be adulterated or mixed with any other matter or thing (except as aforesaid) in the possession of a brewer of beer for sale shall be forfeited, and the brewer shall incur a fine of £100.

(2) A dealer in or retailer of beer shall not adulterate or dilute beer, or add any matter or thing thereto (except finings for the purpose of clarification), and any beer found to be adulterated or mixed with any other matter or thing (except finings) in the possession of a dealer in or retailer of beer shall be forfeited and he shall incur a fine of 50*l.* : 48 & 49 Vict. c. 51, s. 8.

To mix beer with an inferior quality is adulteration: *Croft v. Taylor*, 19 Q. B. D. 324 ; 51 J. P. 789 ; 56 L. J. M. C. 137 ; 40 L. T. 310 ; 36 W. R. 47.

Provisions to be applied to allowances and penalties. The powers and provisions contained in any Act relating to excise allowances, or to penalties or forfeitures under Excise Acts, and now or hereafter in force, shall respectively be of full force and effect with respect to the allowances mentioned in this Act of this Act, and the penalties and forfeitures thereby imposed so far as the same are applicable and are consistent with the provisions of this Act, as fully and effectually as if the same had been herein specially enacted with reference to the last-mentioned allowances, penalties, and forfeitures respectively : 48 & 49 Vict. c. 51, s. 9.

Procedure under Sale of Food Acts.] The word "food" includes every article used for food or drink by man other than drugs or water : 38 & 39 Vict. c. 63, s. 2. The proceedings to recover penalties are under the Summary Jurisdiction Acts : 1878 c. 20. But all summonses for the offence must be served within a reasonable time, and in the case of perishable articles, not exceeding twenty-eight days from the date of purchase, and

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summons must state the prosecutor's name and particulars of the offence, and must be made returnable in less than seven days per service : 42 & 43 Vict. c. 30, s. 10.

[It is not necessary to prove that the seller knew of the adulteration : *Betts v. Armstead*, 20 Q. B. D. 721 ; 52 J. P. 471 ; 57 J. M. C. 100 ; 58 L. T. 811 ; 36 W. R. 720. The false representation must be made at the time of the sale and not at a prior time : *Kirk v. Coates*, 16 Q. B. D. 49 ; 50 J. P. 148 ; 55 L. J. C. 182 ; 54 L. T. 178 ; 34 W. R. 295. The sale is deemed to be to the prejudice of the purchaser unless the purchaser is told of the mixture and makes no objection : *Sandys v. Small*, L. R. Q. B. 49 ; 42 J. P. 550 ; 26 W. R. 814 ; *Higgins v. Hall*, 51 J. P. 293. It is no defence that the purchaser bought only for analysis : 42 & 43 Vict. c. 30, s. 2. When an inspector sends a messenger into the place of sale and waits outside the inspector is not the purchaser : *Stace v. Smith*, 45 J. P. 141 ; *Horder v. Scott*, Q. B. D. 552 ; 49 L. J. M. C. 78 ; 42 L. T. 660 ; 44 J. P. 520 ; 36 W. R. 918. The purchaser must notify the intention to have the article analysed : *Barnes v. Chipp*, 3 Ex. D. 176 ; 47 L. J. C. 85 ; 38 L. T. 570 ; 26 W. R. 635. But calling the analyst of the county instead of the public analyst, if he is both, is no objection : *Wheeler v. Webb*, 51 J. P. 661. If there is no evidence to contradict the analyst's certificate the justices are bound to act upon it : *Harrison v. Richards*, 45 J. P. 552.

When a defence is made under 38 & 39 Vict. c. 63, s. 25, that the article had been purchased by the seller with a written warranty as to its nature, the warranty must be specific and not general : *Harris v. May*, 12 Q. B. D. 97 ; 48 J. P. 281 ; 32 W. R. 595 ; 53 L. J. M. C. 39. The offence under section 6 is not confined to adulteration but extends to articles when they are different in substance and quality : *Knight v. Bowers*, 14 Q. B. D. 445 ; 49 J. P. 614 ; 54 L. J. M. C. 108 ; 53 L. T. 234 ; 33 W. R. 112.

15. Temporary continuance of licenses forfeited for single offences.] Where any licensed person is convicted for the first time of any one of the following offences :—

1. Making an internal communication between his licensed premises and any unlicensed premises ;
2. Forging a certificate under the Wine and Beer-house Acts, 1869 and 1870 ;

- Sect. 15. 3. Selling spirits without a spirit license ;
 4. Any felony ;

and in consequence either becomes personally disqualified or has his license forfeited, there may be made or on behalf of the owner of the premises an application to a court of summary jurisdiction for authority to carry on the same business on the same premises until the next special sessions for licensing purposes, and a further application to such next special sessions for the grant of a license in respect of such premises, and for this purpose the provisions contained in the Intoxicating Liquor Licensing Act, 1828, with respect to the grant of a temporary authority, and to the grant of licenses at special sessions, shall apply as if the person convicted had been rendered incapable of keeping an inn, and the person applying for such grant was his assignee.

This section refers to making an internal communication contrary to the Licensing Act, 1872, section 9 ; forging a certificate contrary to 32 & 33 Vict. c. 27, s. 11 ; selling spirits without a license contrary to Licensing Act, 1872, section 3 ; and a conviction for felony, forfeiting a license, as to which, see 3 & 4 Vict. c. 61, s. 7 ; 23 Vict. c. 27, s. 22 ; and 33 & 34 Vict. c. 29, s. 1. The words "where any person is convicted," imply that the conviction must take place after this Act. This section in fact brings these cases expressly within the words "incapable of keeping an inn," used in 9 Geo. 4, c. 61, s. 14, also. But the court has decided that in the case of a conviction for felony, the landlord and new tenant have not all the remedies of new tenancy under 9 Geo. 4, c. 61, s. 14, but are restricted to the two remedies above stated, namely, an application to petty sessions under 5 Vict. c. 44, and then a further application to the next term sessions : *Stevens v. Sharnbrook JJ.*, 53 J. P. 423.

The court has decided that the justices have the same but a greater discretion as to granting or refusing the transfer license to the landlord or new tenant, when the licensed person has been convicted of felony : *R. v. Moore or Hertfordshire JJ.*, 7 Q. B. 542 ; 45 J. P. 768 ; 50 L. J. M. C. 121. And he is equally entitled to appeal to quarter sessions : *R. v. West Riding*, Q. B. D. 417 ; 52 L. J. M. C. 99 ; 48 J. P. 149. As to the

where the justices on renewal or a new grant have a discretion limited to the four grounds, the same limit will apply to applications for transfer : *Simmonds v. Blackheath J.J.*, 17 Q. B. D. ; 50 J. P. 742 ; 55 L. J. M. C. 166 ; 35 W. R. 167.

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Regulations as to Entry on Premises.

16. *Constable to enter on premises for enforcement of Act.*] Any constable may for the purpose of preventing or detecting the violation of any of the provisions of the principal Act or this Act which it is his duty to enforce, at all times enter on any licensed premises, or any premises in respect of which an occasional license is in force.

Every person who, by himself, or by any person in his employ or acting by his direction or with his consent refuses or fails to admit any constable in the execution of his duty demanding to enter in pursuance of this section, shall be liable to a penalty not exceeding for the first offence five pounds, and not exceeding for the second and every subsequent offence ten pounds.

Though under this section the constable seems not bound to show special reasons to the licensed person before entering a licensed premises, yet in case of dispute as to the right of entry he will not be justified, without being able to show some reasonable ground for thinking that the statute was about to be or had been violated. And on proving the offence in the second paragraph, the constable must allege and prove some reasonable ground for entering. If, however, the constable says he wants to enter if there was anything wrong in the house as he was going about and of visiting all the licensed houses, this will be deemed a sufficient reason for demanding entry : *R. v. Dobbins*, 48 J. P. 182. There is no limit as to the hour of demanding entry, but justices will always consider whether the time was reasonable.

The word "premises" includes outhouses : *R. v. Tott*, 30 L. J. C. 177 ; 4 L. T. 306 ; 25 J. P. 327 ; 9 W. R. 663.

The right of a constable to enter is confined to licensed premises, that is to say, premises licensed by the justices ; for if a spirit dealer under a dealer's retail license sells spirits not to be

Sect. 16. consumed on the premises under 24 & 25 Vict. c. 21, s. 2, is exempt from a justices' license under section 73, then the stable has no right to enter : *Harrison v. Mac L'Meel*, 48 J. P. 50 L. T. 210.

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The Prevention of Crime Act, 1871, 34 & 35 Vict. c. 112, which imposed higher penalties upon all who assault or wilfully obstruct any constable, now extends to all cases of resist wilfully obstructing any constable in the execution of his provided the penalty on a first conviction shall not be greater than 5*l.*, and the imprisonment in default not more than months : 48 & 49 Vict. c. 75, s. 2.

17. *Search warrant for detection of liquor sold or kept contrary to law.*] Any justice of the peace if satisfied by information on oath that there is reasonable ground to believe that any intoxicating liquor is sold by retail or exposed or kept for sale by retail at any place within his jurisdiction, whether a building or not, in which such liquor is not authorised to be sold by retail, may in his discretion grant a warrant under his hand, by virtue whereof it shall be lawful for any constable named in such warrant, at any time or times within one month from the date thereof, to enter, and, if need be by force, the place named in the warrant and every part thereof, and examine the same and search for intoxicating liquor therein, and seize and remove any intoxicating liquor found therein which there is reasonable ground to suppose is in such place for the purpose of unlawful sale at that or any other place, and the vessels containing such liquor ; and in the event of the owner or occupier of such premises being convicted of selling by retail or exposing or keeping for sale by retail any liquor which he is not authorised to sell by retail, the intoxicating liquor so seized and the vessels containing such liquor shall be forfeited.

When a constable has entered any premises in

nce of any such warrant as is mentioned in this Sect. 17.
 ion, and has seized and removed such liquor as
 resaid, any person found at the time on the premises
 ll, until the contrary is proved, be deemed to have
 m on such premises for the purpose of illegally deal-
 ; in intoxicating liquor, and be liable to a penalty not
 exceeding forty shillings.

Any constable may demand the name and address of
 y person found on any premises on which he seizes
 from which he removes any such liquor as aforesaid,
 d if he has reasonable ground to suppose that the
 me or address given is false, may examine such person
 rther as to the correctness of such name and address,
 d may, if such person fail upon such demand to give
 a name or address, or to answer satisfactorily the
 estions put to him by the constable, apprehend him
 ithout warrant, and carry him as soon as practicable
 fore a justice of the peace.

Any person required by a constable under this section
 , give his name and address who fails to give the same,
 : gives a false name or address, or gives false informa-
 on with respect to such name and address, shall be
 able to a penalty not exceeding five pounds.

Under this section the liquor and vessels can only be forfeited
 : the event of the owner or occupier being convicted, and the
 eviction would be under Act, 1872, s. 3; but the for-
 iture follows as a direct consequence of the conviction. The
 rfeited articles may be sold under section 51 of the Licensing
 et, 1872. But before sale the owner should have an opportunity
 : being heard: *Gill v. Bright*, 41 L. J. M. C. 28; 36 J. P. 168;
 1 L. T. 591; 20 W. R. 248.

The officers of Inland Revenue can enter licensed houses under
 ch sections as 7 & 8 Geo. 4, c. 53, s. 22; 3 & 4 Vict. c. 61,
 . 11, 12; and 23 Vict. c. 27, s. 24.

The two last paragraphs are similar to those in section 25 of
 e Licensing Act, 1872. There is a like penalty imposed by that
 ction on persons found on licensed premises during closing
 ours in contravention of the Act, 1872. See Act, 1872, s. 25,
 nd notes, *ante*, p. 47.

Occasional Licenses.

Sect. 18. **18.** *Occasional license required at fairs and races.*] Any person selling or exposing for sale any intoxicating liquor in any booth, tent, or place within the limits of holding any lawful and accustomed fair or any races without an occasional license authorising such sale shall, notwithstanding anything contained in any Act of parliament to the contrary, be deemed to be a person selling or exposing for sale by retail intoxicating liquor at a place where he is not authorised by a license to sell the same, and be punished accordingly.

Provided that this section shall not apply to any person selling or exposing for sale intoxicating liquor in premises in which he is duly authorised to sell the same throughout the year although such premises are situate within the limits aforesaid.

This section abolishes an exemption long enjoyed under a series of statutes by keepers of some licensed houses of frequenting fairs and races to sell liquors in booths (see *Hayward v. Hollis*, 28 L. T. 702; 21 W. R. 920; 37 J. P. 376), and renders it necessary for them henceforth in all cases to obtain a justice's occasional license, otherwise the penalty of selling without a license is incurred under Act, 1872, s. 3.

See 24 & 25 Vict. c. 91, s. 13; 25 & 26 Vict. c. 22, s. 13; 26 & 27 Vict. c. 33, ss. 19, 24; 27 & 28 Vict. c. 18, s. 5, and new section of this Act.

As to the exception formerly preserved in favour of beerhouses at fairs, see 1 Will. 4, c. 64, s. 29, *post*.

19. *Occasional licenses—Extension of time for closing.*] Whereas by 25 & 26 Vict. c. 33, s. 20, it is provided that the hours during which an occasional license shall authorise the sale of any beer, spirits, or wine shall extend from sunrise until one hour after sunset: Be it enacted, that the said section shall be construed as if in place of the words "sunrise until or

er sunset" there were inserted the words "such Sect. 19.
 t earlier than sunrise until such hour not later
 1 o'clock at night as may be specified in that
 in the consent given by the justice for the
 g of such occasional license."

& 27 Vict. c. 33, s. 20, *post*; 27 & 28 Vict. c. 18, s. 5,

Offences on premises with occasional
 .] For the purpose of so much of the principal
 relates to offences against public order, that is to
 tions twelve to eighteen, both inclusive, and the
 ; for giving effect to the same, a person taking
 occasional license shall be deemed to be a licensed
 within the meaning of the said sections, and the
 1 which any intoxicating liquors are sold in pur-
 of the occasional license shall be deemed to be
 l premises, and to be the premises of the person
 out such license.

ctions 12 to 18 of Licensing Act, 1872, and notes.

Miscellaneous.

Supply of deficiency in quota of borough
is on joint committee.] Where from any reason
 re not for the time being three qualified borough
 ; to form the quota of a joint committee for such
 h, in pursuance of section thirty-eight of the
 al Act, the deficiency in the number of such
 h justices shall be supplied by qualified county
 ; to be appointed by the county licensing
 tee.

section 38 of the Licensing Act, 1872, where the necessary
 ent is made, and notes.

Sect. 22. **22.** *Provisional grant and confirmation of licenses to new premises.*] Any person interested in any premises about to be constructed or in course of construction for the purpose of being used as a house for the sale of intoxicating liquors to be consumed on the premises may apply to the licensing justices as the confirming authority for the provisional grant and confirmation of a license in respect of such premises, and the justices and confirming authority, if satisfied with the plans submitted to them of such house, and if such premises had been actually constructed in accordance with such plans they would, on application, have granted and confirmed such a license in respect thereof, may make such provisional grant and order of confirmation accordingly.

A provisional grant and order of confirmation shall not be of any validity until it has been declared to be final by an order of the licensing justices made on such notice as has been given as may be required by the justices at a general annual licensing meeting or at special sessions held for licensing purposes. A declaration shall be made if the justices are satisfied that the house has been completed in accordance with such plans as aforesaid, and are also satisfied that no objection can be made to the character of the holder of such provisional license.

A provisional grant and confirmation of a license shall be subject to the same conditions as to the giving of notices and generally as to procedure to which a grant and confirmation would be subject if they respectively were not provisional, with this exception, where a notice is required to be put up on a door

use such notice may be put up in a conspicuous Sect. 22.
 position on any part of the premises.

This section shall, with the necessary variations, extend to the provisional removal to any premises of an existing license under section fifty of the principal Act.

This was a new provision, though under the previous law it was competent to justices under 9 Geo. 4, c. 61, to grant a license to persons about to keep an inn though the inn was not finished. The section expressly recognises the practice, and allows it in all cases of houses to be licensed for consumption on the premises.

It is imperative on the justices to grant the final license after a provisional grant is made if satisfied that the plan has been tried out, and as to the character of the applicant. But the justices cannot be said to be merely acting ministerially when called on to confirm the provisional order. In one case the justices assented to the grant subject to an alteration suggested as to the site, which alteration was assented to at the time; but the justices never met again nor assented to any other site, and it was held that the applicant was entitled to act upon the original plan shown to the justices: *R. v. Cox*, 48 J. P. 440. The licensing justices, at the time of the provisional grant being applied for and allowed, should specify what notice an applicant is to give before coming before them for the final order, for the licensing justices may obviously make this final order at any period of the year between the general annual meetings. But there is nothing in this or the other Acts to make it compulsory on the justices to renew the license thereafter, any more than in ordinary cases. The licensing justices are to make the final order, and the confirming authority need not again confirm the original license.

The application for a provisional grant must be made at the general annual licensing meeting, though the final license may be made at any time, and what notice is to be given may be fixed by a special transfer sessions. There seems to be no limit of time within which the applicant *must* apply for the confirmation; but a reasonable time may be said to be implied, for if delayed the interests of third parties, who would otherwise apply, may be interfered with.

This application may be combined with the application for removal as authorised by Act, 1872, section 50, *ante*, p. 91.

Sect. 23. **23.** *One license of justices may extend to several excise licenses.]* Separate licenses of justices shall be required in the case of separate excise licenses; and a license of justices shall comprehend a permission to the licensee to take out as many excise licenses as be specified in such license of the justices.

The effect of this section will be to make only one fee payable instead of a fee applicable to each separate license.

24. *Confirmation of license to sell liquor to be consumed on the premises not required.]* A license to sell any intoxicating liquor for consumption only off the premises shall not require confirmation by any authority.

The Act, 1872, laid down the rule that no new license, whether an off-license or an on-license, should be valid until it was confirmed by the confirming authority. There is now an exception to the necessity of a confirmation as regards off-license under the Licensing Act, 1872, sections 37, 38; and the same applies to off-licenses removed under section 50, *ante*, p. 91.

25. *Joint committee to make rules under section 43 of principal Act.]* Where the confirming authority is a joint committee, that committee may make rules in pursuance of section forty-three of the principal Act as to the proceedings to be adopted for the confirmation of new licenses, and as to the costs of such proceedings, and the persons by whom such costs are to be paid.

See Licensing Act, 1872, section 43, where the necessary confirmation here directed is made, and notes, *ante*, p. 80.

26. *Notices of adjourned brewster session of intention to oppose.]* Whereas by section forty of the principal Act it is enacted that a licensed brewster

plying for the renewal of his license need not attend **Sect. 26.**
 person at the general annual licensing meeting unless
 is required by the licensing justices so to attend: Be
 enacted, that such requisition shall not be made, save
 some special cause personal to the licensed person to
 whom such requisition is sent.

It shall not be necessary to serve copies of notices of
 adjournment of a general annual licensing meeting
 on holders of licenses or applicants for licenses who are
 not required to attend at such adjourned annual general
 licensing meeting.

A notice of an intention to oppose the renewal of a
 license served under section forty-two of the principal
 Act shall not be valid unless it states in general terms
 the grounds on which the renewal of such license is to
 be opposed.

See Licensing Act, 1872, section 42, and notes, *ante*, p. 75.

This section takes from the justices the power of compelling
 the attendance of parties seeking a renewal of their licenses or
 certificates, unless for some cause personal to the applicants. Nor
 need applicants be served, as a matter of course, with notice to
 attend. The word "personal" is flexible, and is capable of a very
 wide signification, as to which see *Sharp v. Wakefield*, 22 Q. B. D.
 20; 53 J. P. 20; 58 L. J. M. C. 57; 60 L. T. 130; 37 W. R. 187.
 It is not to be assumed, however, that the applicant is not to make
 application at each renewal, which he must always do, either by
 himself or by some authorised messenger. See *R. v. Newcastle JJ.*,
 1 J. P. 244.

When the justices themselves start the objection and give an
 opportunity to the party to answer it, they are bound to receive
 the evidence on oath: *R. v. Eales*, 44 J. P. 553; 42 L. T. 735.
 See also *R. v. Howard*, *Justices of Congleton*, 53 J. P. 454.

27. *No appeal to quarter sessions in certain cases.]* No appeal shall be had to quarter sessions from
 any act of any justice with respect to the grant of new
 certificates under the Wine and Beerhouse Acts, 1869

Sect. 27. and 1870. (Some words at the beginning repealed by 46 & 47 Vict. c. 39, Sched.)

This section was necessary in consequence of the court holding in *R. v. Smith, R. v. Southport JJ.*, L. R. 8 Q. B. 146; 37 J. P. 214; 42 L. J. M. C. 46; 28 L. T. 129; 21 W. R. 382, that the enactments incorporated in 32 & 33 Vict. c. 27, s. 8, though themselves repealed, kept alive the power of appeal to quarter sessions against the refusal of new certificates.

This does not affect the right of appeal to quarter sessions which still applies to all refusals of transfers, or of renewals of certificates or licenses under the Wine and Beerhouse Acts. See 9 Geo. 4, c. 61, ss. 27, 28, 29; Act, 1872, Sched.; 32 & 33 Vict. c. 27, s. 8.

28. *Substitution of licensing justices for Commissioners of Inland Revenue as respects certain notices.*] Whereas by section eleven of the principal Act it is provided that every licensed person shall cause to be painted or fixed, and shall keep painted or fixed, on the premises in respect of which his license is granted, in a conspicuous place, and in such form and manner as the Commissioners of Inland Revenue may from time to time direct, his name, with such additions as in the said Act mentioned: and whereas it is expedient to substitute in the said section the licensing justices for the Commissioners of Inland Revenue: Be it therefore enacted,—

That in the said eleventh section the expression “licensing justices” shall be deemed to be substituted for the expression “Commissioners of Inland Revenue,” and the word “justices” for the word “commissioners.”

The Licensing Act, 1872, section 11, *ante*, p. 19, has been altered in the way here pointed out. See notes to that section.

29. *Definition of term “owner.”*] Any person possessing an estate or interest in premises licensed

the sale of intoxicating liquors, whether as owner, **Sect. 29.**
 or mortgagee, prior or paramount to that of
 immediate occupier, shall, on payment of a fee of
 shilling to the clerk of the licensing justices, be
 entitled to be registered as owner or one of the owners
 of such premises: Provided that when such estate or
 interest is vested in two or more persons jointly, one
 of such persons shall be registered as representing
 the estate or interest.

See the Licensing Act, 1872, section 36, and notes; also sections 56, 70, 74.

A mortgagee has been held to be sufficiently aggrieved by the refusal of the renewal of the tenant's license to be able to appeal at quarter sessions if the mortgage deed made the mortgagee the licensee for the license holder in that respect: *Garrett v. Midland R.R. Co.*, 12 Q. B. D. 620; 53 L. J. M. C. 81; 13 P. 357; 32 W. R. 357. But in general the landlord, as such, is not a stranger to the license (except in those cases where notice of revocation is to be sent to him), and cannot insist on appealing on his own right to quarter sessions against a conviction of the licensee: *R. v. Andover JJ.*, 16 Q. B. D. 711; 50 J. P. 549; 44 L. J. M. C. 143; 55 L. T. 23; 34 W. R. 456. Where, however, a license is refused to his tenant, the landlord may join with the applicant in an appeal to quarter sessions, as he is an aggrieved party under 9 Geo. 4, c. 61, s. 27.

30. *Persons not to be liable for supplying liquor to private friends without charge.*] No person keeping a house licensed under this or the principal Act shall be liable to any penalty for supplying intoxicating liquors, after the hours of closing, to private friends *bonâ fide* entertained by him at his own expense.

This section recognises as law what was already in effect created by the courts to be the law under the previous Acts. The words "private friends" seem to include all who are not in a relative situation of customers. The justices have nothing to do with the occasion of the entertainment, except as throwing light on the fact whether the friends were pretended friends only

has invited friends, and entertains them at his own expense, the license holder is not liable under section 9, *ante*, p. 157, because liquor is supplied to and consumed by the friends during closing hours: *Pine v. Barnes*, 20 Q. B. D. 221; 52 J. P. L. J. M. C. 28; 58 L. T. 520; 36 W. R. 473. The entertainment must be in the licensed premises. Though the private party may be lawfully on the premises during closing hours, the license holder will commit an offence if he allow them to remain on gaming, though it seems the friends themselves cannot be convicted of aiding him in the offence: *Hare v. Osborne*, 34 L. J. P. 759; *Cooper v. Osborne*, 35 L. T. 347; 40 J. P. 75. For a like reason he will be liable if he allow his friend to play at billiards: *Ovenden v. Raymond*, 40 J. P. 727; 34 L. T.

31. *Additional retail license may be granted at special sessions for licensing.*] (*Repealed* by Vict. c. 6, s. 2, *post*, which see.)

Definitions and Repeal.

32. *Definitions.*] In this Act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them:—

ms of this Act with respect to the closing of pre- **Sect. 32.**
 s, be deemed to be part of such town after it has
 1 declared so to be by an order of the county
 nsing committee having jurisdiction in the place
 re such houses are situated: Provided that no urban
 itary district, whether including such adjacent houses
 not, shall be deemed a town, unless it contains one
 usand inhabitants.

"*Populous place.*"'] "Populous place" means any
 a with a population of not less than one thousand,
 ich, by reason of the density of such population, the
 nty licensing committee may by order determine to
 a populous place.

At a meeting especially convened for that purpose in
 nner provided by any regulations in that behalf, or
 default of such regulations, by the clerk of the peace,
 soon as may be after the passing of this Act, and not
 r than the first day of September, one thousand eight
 idred and seventy-four, the county licensing com-
 tee shall consider all the cases within their jurisdic-
 1 with respect to which it is incumbent upon them to
 ke orders in pursuance of this section, and they shall
 ke orders accordingly, and shall specify therein the
 ndaries of such towns or populous places.

The county licensing committee may adjourn any
 eting held in pursuance of this section, and may also,
 any subsequent meeting especially convened for that
 rpose, make with respect to any town or populous
 ce within their jurisdiction any like order not restric-
 e of any order previously made.

Provided that as soon as may be after the publication
 each census the county licensing committee shall, at

Sect. 32. a meeting to be especially convened for the purpose of revising the orders then in force within their jurisdiction constituting areas either parts of towns or populous places, and may alter or cancel any of the said orders or may make such further orders, if any, as they shall deem necessary to give effect to the provisions of this Act.

“*Occasional license.*”] “Occasional license” means a license to sell beer, spirits, or wine, granted in pursuance of 25 & 26 Vict. c. 22, s. 13, and 27 Vict. c. 11, s. 5, and the Acts amending the same in relation to the licenses therein mentioned, or of any such Acts.

“*A new license.*”] “A new license” means a license for the sale of any intoxicating liquor, granted at a general annual licensing meeting in respect of premises in respect of which a similar license has not theretofore been granted.

Town.] This definition of “town” refers to the Public Health Act, 1872 (35 & 36 Vict. c. 79, s. 4). That Act is now repealed and superseded by the Public Health Act, 1875 (38 & 39 Vict. c. 55), and though the Act, 1872, is incorporated in this Act still the definition of urban sanitary district is repeated almost verbatim in the Public Health Act, 1875, and thus no difference is caused by the subsequent repeal. Both Acts define an urban sanitary district as (1) any borough constituted such either before or after the passing of that Act; (2) an Improvement Act district constituted such before that Act (*i.e.*, before 10th August, 1871) and having no part of its area situate within a borough or local government district; (3) any local government district, constituted such either before or after that Act, having no part of its area situated within a borough and not coincident in area with a borough or Improvement Act district. The definition of “town” in Act, 1872, s. 74, was repealed by this Act, section 33, *post*.

Populous place.] As to the definition of “populous place” which is used in this Act, section 3, *ante*, p. 148, for regulating the closing time of licensed houses, the county licensing committee might meet before 1st September, 1874, and decide

ther any part of their district could be called a populous place. only limit to their discretion in this matter was, that they should not declare any place to be populous which had less than a population of 1,000. And the last published census was the test of population according to Act, 1872, section 65, *ante*, p. 117. The Act was, however, left undefined as to extent, and it was for the justices to define it. The "regulations in that behalf" for the licensing of the county licensing committee are those made in pursuance of the Licensing Act, 1872, section 37. Where an order as to a populous place has been once made, there is no power given to restrict it, *i.e.*, to reduce the area of the operation of the order till the next census. But there seems nothing to prevent the county licensing committee acting from time to time on 1st September, 1874, and declaring new places, or increasing places, as populous places within the meaning of this section.

Sect. 32.
NOTE.

Occasional license.] As to *occasional* licenses, authorising the sale of liquor at other places than licensed premises, see 25 & 26 Vict. c. 22, s. 13, *post*; 26 & 27 Vict. c. 33, ss. 19—21, *post*; 27 & 28 Vict. c. 18, s. 5, *post*; and the 18th, 19th, and 20th sections of this Act of 1874.

New license.] The new definition of "*new license*" contains the word "similar," which can scarcely be construed as meaning identically the same." The word seems properly to imply that a license must be for the same kind of liquor, and the same general character as regards its being in-door or out-door, and as any particular qualification attached to it. Different kinds of licenses have been dealt with by separate statutes, and yet all licenses have some points identical. Yet an alehouse license under 9 Geo. 4, c. 61, is not similar to a beerhouse license under 1844, c. 4, for the former includes wines and spirits: *Marwick v. Ulin*, L. R. 9 Q. B. 509; 38 J. P. 518; 43 L. J. M. C. 169; 30 T. 719; 22 W. R. 823. It may now be taken that a six-day license is not similar to an ordinary seven-day license, though the words sold may be identical: *R. v. Crewkerne JJ.*, 21 Q. B. D. 85; J. P. 372; 57 L. J. M. C. 127; 60 L. T. 84; 36 W. R. 629. The word "theretofore" does not necessarily mean that the previous license must be subsisting continuously, at least if this was in no default of the occupier of the premises: *R. v. Market North*, 51 J. P. 438; 57 L. T. 56; 35 W. R. 734; 56 L. J. M. C.

But if the license has been forfeited for some offence, the next application must usually be for a new license: *R. v. Westling JJ.*, 52 J. P. 455; 21 Q. B. D. 258; 57 L. J. M. C. 103; W. R. 258; unless in those cases specified in this Act, section 15, *ante*, p. 170: *Stevens v. Sharnbrook JJ.*, 53 J. P. 423.

Sect. 33. **33. *Repeal.***] [There are hereby repealed the sections of the principal Act relating to the following matters; that is to say,—

- (1) Sections nineteen to twenty-two, both inclusive relating to adulteration, and the first schedule to the principal Act;
- (2) Section twenty-four, relating to hours of closing and
- (3) Section thirty-five, relating to entry on premises by constable; and
- (4) So much of sections five, six, thirteen, fourteen, sixteen, seventeen, and twenty-eight, as relates to the records of convictions on licenses and of section seventy-four, as contains the definition of a town for the purposes of the provisions with respect to closing and of a new license.
- (5) The last paragraph of section fifty-six, beginning with words, "In a county the justices," to the end of the section:]

This section was repealed by 46 & 47 Vict. c. 39, Sched., but here retained for convenience of showing the mode of dealing with some sections in the Act, 1872.

SCHEDULE.

METROPOLITAN DISTRICT.

The metropolitan district.] The city of London or the liberties thereof, or any parish or place for the time being subject to the jurisdiction of the Metropolitan Board of Works, or within the area contained within a circle the radius of which is four miles from Charing Cross.

[The jurisdiction of the Metropolitan Board of Works was defined by 18 & 19 Vict. c. 120, s. 249; 25 & 26 Vict. c. 120, s. 42.]

APPENDIX

Appendx.

OF RELATIVE STATUTES IN CHRONOLOGICAL ORDER.

9 GEO. 4, CAP. 61.

ACT to regulate the granting of Licenses to Keepers of Inns, Alehouses, and Victualling Houses in England.(a)

[15th July, 1828.]

General licensing meetings to be held annually—Time of holding such meetings.] WHEREAS it is expedient to reduce into one Act the law relative to the licensing by justices of the peace of persons keeping or being about to keep inns, alehouses, and victualling houses, to sell excisable liquors, by retail, to be drunk or consumed on the premises, in that part of the United Kingdom called England: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that in every division of every county and riding, and of every division of the county of Lincoln, and in every hundred of every county, and being within any such division, and in every liberty, division or every liberty, county of a city, county of a town, city, and town corporate in that part of the United Kingdom called England, there shall be annually holden a special session of the justices of the peace (to be called the general annual licensing meeting), for the purpose of granting licenses to persons keeping

(a) This Act was described in the Licensing Act, 1872, as "The Intoxicating Liquor Licensing Act, 1828," and in all formal notices a new statutory description should be followed unless the year and description of the Act are specified.

Appndx. or being about to keep inns, alehouses, and victualling houses, sell excisable liquors by retail, to be drunk or consumed on premises therein specified; and that such meetings shall be holden in the counties of Middlesex and Surrey within the ten days of the month of March, and in every other county some day between the twentieth day of August and the fourth day of September inclusive; and that it shall be lawful for justices acting in and for such county or place assembled at meeting, or at any adjournment thereof, and not as herein disqualified from acting, to grant licenses for the purposes said, to such persons as they the said justices shall, in the exercise of the powers herein contained, and in the exercise of discretion, deem fit and proper. (a)

(a) *General effect of this Act.*] This is now the enactment giving all the houses requiring a justices' license or certificate. It is primarily only to inns, alehouses, and victualling houses, but extended to all the other houses by 32 & 33 Vict. c. 27, ss. 5, 6, 33 & 34 Vict. c. 29, s. 4, and Licensing Act, 1872, ss. 68, 71 repealed all the former statutes on the subject, and which are cited in section 35, *post*. The general result, therefore, is that all retail licenses to sell intoxicating liquor are now subject to the rules as to the justices who grant licenses, the times at which meetings of justices are held, the duration of licenses, the fees for the rights of appeal so far as these exist, the mode of transferring or renewing the licenses. The Act, however, being modified by the Licensing Acts, 1872-4, the result is, that there is now no objection against the refusal of a new license, but only against refusal to transfer or renew existing licenses, and the discretion of justices at various stages is not uniform, the discretion being now absolute in the great majority of licenses, and limited to four grounds as regards a few of the licenses. Moreover, nearly all the offences relating to licensed houses are now provided for in the two Licensing Acts, exclusively.

Justices' license, how far necessary.] The general rule now is that a justices' license is necessary before an excise license can be obtained. But there is an exception where a wine dealer obtains an additional retail license from the excise to sell wine not to be consumed on premises. And a grocer may be a wine dealer to that extent: *see v. Thatcher*, 3 Q. B. D. 46; 42 J. P. 213; 47 L. J. M. C. L. T. 347. And a spirit dealer may also in some cases not require a justices' license to sell spirits by retail. See Act, 1872, s. 73, *ante*, p. 127. And wherever the house is situated it must be licensed by some authority. Thus, a license is necessary to sell in an island some miles from the county: *Wright v. Harris*, 49 J. But it is not an indictable offence to keep an inn without a house license; *Anon.*, 3 Salk. 25; *R. v. Edwards*, 3 Salk. 27. A boarding-house keeper who merely sends out for liquors as agent

*Discretion of Justices.***Appendix****NOTE.**

It does not require a license: *Parker v. Flint*, 12 Mod. 254; *Raym.* 479; *Taylor v. Oram*, 1 H. & C. 370; 31 L. J. M. C. 252; . P. 8; 7 L. T. 68; 10 W. R. 800.

mode of justices exercising discretion.] At the general annual meeting and its adjournment, the justices sit in public and judicially, and are bound to hear the applications of all persons in their division who desire to have licenses, and who have complied with the statutes as to notices, and who can prove the requisite qualifications. At the same time any one of the public is entitled to see the grant of a new license; and every applicant is bound to state the name of the owner of the house to be licensed: *Licensing Act, 1872*, section 36, *ante*, p. 62. The justices at the general annual meeting have, as a general rule, an absolute discretion to grant a new license for an inn under this Act, or for in-door and wine houses, first licensed after 1872, without stating reasons. The discretion of the justices must, however, be a judicial discretion, not a mere capricious act, regardless of the special circumstances of the application: *R. v. Boteler*, 4 B. & S. 959; 33 L. J. M. C. 101; 7 P. 453. As to some out-door certificates and in-door certificates, justices have only a limited discretion: 32 & 33 Vict. c. 27, ss. 8, 19.

They act judicially, and an appeal to quarter sessions lies, except in their refusing a new grant, for the appeal against refusing new licenses was entirely taken away by the Act, 1872, though retained in the refusal is a transfer or a renewal of the license. See *Licensing Act, 1872*, Schedule. No action lies against the justices for refusal: *West v. Goodchild*, 3 Wils. 121. They may rightly refuse a license under this Act, on the ground that there are already too many ale-houses: *R. v. Lancashire JJ., Re Tyson*, 35 J. P. 170; 40 L. J. M. C. 1. L. R. 6 Q. B. 97; 23 L. T. 461; 19 W. R. 204; or that the house is so far removed from police supervision: *Sharp v. Wakefield*, 22 B. D. 239; 58 L. J. M. C. 57; 53 J. P. 20; 60 L. T. 130; 37 R. 187. They do wrong, however, to lay down a rule before hearing the applications, such as that they will refuse all licenses, except the party will promise to take out an excise license to sell spirits: *R. v. Wester*, 31 L. J. M. C. 93; 26 J. P. 151; 2 B. & S. 322; 5 L. T. 757; 8 Jur. (N.S.) 484. Nor can they lay down any general rule before they fetter their discretion, for they ought to consider the circumstances of each case independently: *R. v. Walsall*, 24 L. T. 111; 18 R. 757; 3 C. L. R. 100. Nor can justices annex a condition to the license, such as that, for example, the applicant must pay a debt to a third person: *R. v. Athay*, 2 Burr. 653.

The justices have in most cases a large discretion both as to the kind of person and the kind of house to be licensed, and are bound to see that the requirements of the statutes have been complied with. The discretion of the licensing justices is limited so far that they cannot grant a license except to a person about to keep an inn, &c.: *R. v. Wilkinson*, L. T. 370; 28 J. P. 597. But they may treat a confectioner's

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Discretion of Justices.

NOTE.

house where luncheons are provided as a victualling-house within the express words of this section: *R. v. Surrey*, J. P. 423.

Where the house is occupied by a tenant the landlord *quod* not qualified to receive the license in his own name: *R. v. 45 J. P. 372*. But in most cases the license holder need not the premises, and he may manage the house by means of *servus* may be difficult in some cases to distinguish whether a *ma* servant or a tenant: *Mayhew v. Suttle*, 4 E. & B. 347; 19 24 L. J. Q. B. 54.

Where a firm or company are the owners or occupiers of a license is frequently applied for and held by a manager or *son* resides on the premises. And it may happen that one person license, and the company, his employers, being ~~the~~ liable to guests for the loss of luggage: *Dixon v. Bir*, L. 135; 42 L. J. Ex. 135; 28 L. T. 360; *Dawn v. Sims*, 4 783; 28 W. R. 129; 44 J. P. 264.

If the justices are *equally divided* they should adjourn to another day, when some additional justices may be present. If they do not adjourn the case the application will be deemed *lost*. *R. v. Cox*, 48 J. P. 440; *R. v. Carnarvon*, 4 B. & Monmouthshire JJ., 4 B. & C. 844; 8 B. & C. 137; *R. v. Q. B. 380*; 17 L. J. M. C. 70.

Extent of licensed premises.] When a license is granted without defining the metes and bounds, the house included and a piece of land in front: *Marson v. London and* way Company, L. R. 6 Eq. 101; *Richards v. Swansea*.

As to treating *alterations* and enlargements of premises these require new licenses, see Act, 1872, section *ante*, p. 136.

Mandamus to licensing justices.] As justices do not have authority to grant licenses from this statute of 9 Geo. 4. by later statutes, they are bound to hear and determine on the merits, and if they fail to do so, and thereby has not been duly heard, the only remedy usually is to apply to the Court to grant a *mandamus* directing the justices to hear the application over again. The fact that the justices made a mistake sometimes is a ground for a *mandamus*, but usually is the misfortune which cannot be remedied. The justices, like a *magistrate*, are not personally liable for making a mistake in exercising their jurisdiction: *R. v. Barton*, 14 J. P. 738. A *mandamus* will compel the justices to hear an application for a new license, to entertain it; but when once the justices hear and adjudge, often no remedy, if they refuse to grant a new license, though in some cases there may be a remedy by *mandamus* for the neglect of some preliminary condition. Should

*Mandamus.**Appendx.*

NOTE.

justices seek to evade it, the prosecutor may traverse they make in answer to the writ of *mandamus*: *R. v. R. v. Pirehill*, 14 Q. B. D. 13; 54 L. J. M. C. 17; 44; 49 J. P. 36; 33 W. R. 205. Thus, in one case, a l to the justices and they heard the case over again same conclusion, and the applicant, by pleading, raised l as to whether the justices really heard the case or to hear it over again: *R. v. Pirehill Justices*, 49 this course of traversing the return is always open to *R. v. King*, or *Manchester JJ.*, 20 Q. B. D. 430; L. J. M. C. 20; 58 L. T. 607; 36 W. R. 600.

amms is issued to justices it is not framed so as to grant the license, but merely to hear and determine; on hearing the case again have the same jurisdiction to objections to the license, and to hear parties on the y had acted regularly on the first occasion: *R. v. ss of Congleton*, 53 J. P. 454; *R. v. Farquhar*, L. R. J. P. 166.

act corruptly, the only remedy is a criminal informa- a: *R. v. Holland*, 1 T. R. 692; *R. v. Young*, 1 Burr. ries, 13 East, 270; *R. v. Davis*, 3 Burr. 1317. Thus, se because the applicant would not vote for a parti- or parliament, was a ground of criminal information: 3 Burr. 1317. And it would be the same whether they used the license on such ground: *R. v. Holland*, ff one set of justices were to grant a license which se justices had refused, this would be indictable; *R. v. R. 451.*

f licenses granted or refused by justices who are inte- respective remedies of *certiorari* and *mandamus*, see 44 J. P. 298.

mandamus is usually issued to justices who decide or y have an absolute discretion when they have only a a: *R. v. King*, 20 Q. B. D. 43; 52 J. P. 164; 57 L. J. T. 607; 36 W. R. 600; *R. v. Scott*, 22 Q. B. D. 481; 3 L. J. M. C. 78; 37 W. R. 301; 60 L. T. 231.

es refused if there was a better remedy by appeal to : *R. v. Smith*, *R. v. Southport JJ.*, L. R. 8 Q. B. 146; 3 L. T. 129; 21 W. R. 382.

ices make their return to the writ, this is treated like defence to an action, and the prosecutor may traverse eturn that they have heard the case, and allege in effect y pretended to hear it, and all the time intended to gment: *R. v. Pirehill JJ.*, 49 J. P. 453. Or the pro- ad to the return that it is bad in point of law: *R. v. gleton JJ.*, 53 J. P. 454.

ivisional Court refuse or grant a rule for a *mandamus*, judgment in favour of the prosecutor on a *mandamus*,

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Certiorari, &c.

NOTE.

there is an appeal to the Court of Appeal and the House of Lords. *R. v. King*, 20 Q. B. D. 43; 52 J. P. 164, *supra*; *R. v. Cross JJ.*, 21 Q. B. D. 85; 52 J. P. 372; 57 L. J. M. C. 127; 60 L. J. 36 W. R. 629; *R. v. Newcastle JJ.*, 51 J. P. 244.

Certiorari and prohibition.] In some cases a license granted by justices may be granted without jurisdiction, and an application may be made for a writ of *certiorari* to quash it. But this remedy must be applied for within six months, and is difficult owing to the necessity of the application being made by a person aggrieved: *R. v. Surrey JJ.*, 52 J. P. 423; *R. v. Surrey JJ.*, L. R. 5 Q. B. 466; *R. v. Newton*, L. R. 4 Q. B. 585. If a license is sought to be quashed the whole license must be quashed, and not merely one part of it: *R. v. L. JJ.*; *R. v. Mann*, L. R. 8 Q. B. 235; 37 J. P. 212; 42 L. J. M. C. 27 L. T. 847; 21 W. R. 329.

At the most a *certiorari*, unless applied for by the party aggrieved, is a discretionary writ: *Forster v. Forster*, 4 B. & S. 199; 33 Q. B. 314.

And even the party aggrieved may, by his conduct, preclude himself from the remedy: *R. v. South Holland*, 8 A. & E. 429.

A *certiorari* or a prohibition is the remedy where the justices, or one of them, was interested in the subject-matter: *R. v. Great Yarmouth JJ.*, 8 Q. B. D. 168; 46 J. P. 518; *R. v. Farrant*, 20 Q. B. D. 152 J. P. 116; *R. v. Kent JJ.*, 44 J. P. 298.

A license is not always void though the justices granting it had no jurisdiction: *Brown v. Nicholson*, 5 C. B. (N.S.) 468; 22 J. P. 28 L. J. M. C. 49; *R. v. Downs*, 3 T. R. 560; *R. v. Bryan*, 81. In *R. v. Marshall*, 1 N. & M. 277, it was decided that a license obtained by fraud, yet it would not be invalid unless the party licensed practised the fraud.

See also notes to Licensing Act, 1872, section 3, *ante*, p. 5.

A *prohibition* is a corresponding remedy, where it is practicable to prevent justices proceeding in a matter of licensing not yet come over which they have no jurisdiction; but owing to the rapidity with which such applications are disposed of, this remedy is generally inapplicable: *Elstone v. Rose*, L. R. 4 Q. B. 4; *Broad v. Perkins*, 21 Q. B. 533; *Re Briton*, 32 Ch. D. 503.

City of London.] The time of holding the general annual meeting in the city of London was saved by section 36 of this Act, and is the second Monday of March.

Licensing meetings in boroughs.] Disputes formerly existed between boroughs not having a separate court of quarter sessions and county and borough justices, where there was no intromittant in the charter of the borough: *Candlish v. Simpson*, 1 B. & S. 25 J. P. 662; *Brown v. Nicholson*, 5 C. B. (N.S.) 468; 28 L. J. M. C. 49; 22 J. P. 803. But these disputes were put an end to by a

*Licenses in Boroughs.***Appndx.****NOTE.**

4 & 25 Vict. c. 75, which is now repealed. By the *Municipal Corporations Act*, 1882, 45 & 46 Vict. c. 50, s. 246, it is enacted that "Geo. 4, c. 61, the expression "town corporate," "county or place," "division or place" include every borough having a separate commission of the peace, and the expression "high constable" includes any constable of any such borough to whom the justices of the borough at their precept under that Act. See also notes to Act, 1828, on 2, *post*.

The Licensing Act, 1872, section 38, *ante*, p. 67, points out who are the licensing justices in boroughs having a separate commission of the peace, and divides the boroughs into those which have ten justices acting in and for the borough, and those which have not ten justices. The general rule laid down by the *Municipal Corporations Act*, 1882, section 154, is, that where a borough has not a separate court of quarter sessions, the justices of the county in which the borough is situated shall exercise the jurisdiction of justices in and for the borough as fully as they can or ought in and for the county. And no justice of a borough having a separate court of quarter sessions shall be taken into the jurisdiction, exercisable out of quarter sessions, of the justices of a county where the borough was exempt therefrom before the passing of the *Municipal Corporations Act*, 1835. And by section 155 the mayor of a borough shall, by virtue of his office, be a justice for the borough, and shall, unless disqualified to be mayor, continue to be a justice during the year next after he ceases to be mayor, and he shall have precedence over all other justices acting in and for the borough, and be entitled to take the chair at all meetings of justices held in the borough at which he is present by virtue of his office of mayor.

No room in a house licensed for the sale of intoxicating liquors may be used for the business of borough justices: 45 & 46 Vict. c. 50, s. 160. See notes to 46 & 47 Vict. c. 31, *post*.

[*Penalties in quarter sessions boroughs.*] The *Municipal Corporations Act*, 1882, 45 & 46 Vict. c. 50, s. 22, lays down certain rules as to the imposition of penalties adjudged before borough justices. See that Act quoted, *ante*, p. 118.

[*Licensing meetings in the cinque ports.*] By the *Municipal Corporations Act*, 1882, 45 & 46 Vict. c. 50, s. 248, the justices for the five boroughs of Hastings, Sandwich, Dover, Hythe, and Rye, shall have the jurisdiction, powers, and authorities of justices for a county relating to the granting of licenses or authorities to persons to keep alehouses, or victualling houses, or to sell excisable liquors by retail within any of the corporate or non-corporate members or liberties of the five boroughs respectively not being within the limits of a borough having a separate commission of the peace. See also 9 Geo. 4, c. 8, *post*, and notes, where further provisions are contained as to the cinque ports, and where the local statutes relating to those ports are mentioned.

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2. Time and place how to be appointed—*Notices to be given.*] And be it further enacted, that in such division or place as aforesaid there shall be holden, on one day at the least before each such general annual licensing meeting, a petty sessions of the justices acting for such division or place, the majority of whom then present shall, by a precept under their hands, appoint the day, hour, and place upon which such general annual licensing meeting for such division or place shall be holden, and shall direct such precept to the constable of the division or place for which such meeting is to be holden, requiring him, within five days next ensuing that on which he shall have received such precept, to order the several constables or other peace officers within his constablewick to cause to be affixed on the door of the church or chapel where there shall be no church or chapel on some other open and conspicuous place within their respective districts, a notice of the day, hour, and place at which such meeting is appointed to be holden, and to give to or leave at the dwelling-house of each every justice acting for such division or place, and of each every person keeping an inn, or who shall have given notice of his intention to keep an inn, and to apply for a license to sell excisable liquors by retail, to be drunk or consumed on the premises, within their respective districts, a copy of such notice.

(a) As to the *precept* to the high constable, see 32 & 33 Vict. c. 3, which abolishes the office of high constable, and substitutes justices' clerk as the party to receive the precept. But this Act applies to the metropolitan police district or the city of London.

The notice of holding special sessions may be signed by a justice and sent by post to the other justices: 7 & 8 Vict. c. 33.

The *High Constables Abolition Act*, 32 & 33 Vict. c. 47, s. 2, directs justices in quarter sessions to put an end to the office of high constable in certain cases, and enacted as follows:—

How notices are to be sent.] It shall be the duty of the clerk of the peace in each petty sessional division, other than those which are either wholly or partly within the metropolitan police district or the city of London, to send by post to the proper parties in such division all notices of the holding of special or other sessions, of days of holding, and of any other matter or thing (except such as relate to claims of franchise, the hundred or other like district, or to parliamentary or municipal elections, or the registration of electors), of which notices are required by law or custom served upon or sent to any parochial officer or person by high constables, and no precept or notice to perform such duty in any such division shall hereafter be issued to any high constable, after the passing of this Act: 32 & 33 Vict. c. 47, s. 2.

When part of any hundred or other like district is within the

3. *Adjournment of meetings.*] And be it further enacted, **Appndx.**
 it shall be lawful for the justices acting at the general annual
 licensing meeting, and they are hereby required to continue such
 meeting by adjournment to such day or days, and to such place or
 places within the division or place for which such meeting shall
 be holden, as such justices may deem most convenient and suffi-
 cient for enabling persons keeping inns within such division or
 place to apply for such license : Provided nevertheless, that the
 adjourned meeting to be holden next after such general annual
 licensing meeting shall not be so holden in or upon any of the five
 years next ensuing that on which such general annual licensing
 meeting have been holden as aforesaid, and that every adjournment
 of the said general annual licensing meeting shall be holden
 within the month of March in the counties of Middlesex and
 Surrey, and of August or September in every other county (b).

any borough or place having separate police jurisdiction, such
 hundred or district shall, for the purposes of this Act, be deemed to be
 the county in which the other part of such hundred or district is
 situate : 32 & 33 Vict. c. 47, s. 7.

Interpretation of terms.] For the purposes of this Act the word
 "high constable" shall include any constable of any hundred or other
 district, and any officer discharging the duties usually performed
 by high constables by whatever name such officer shall be called ; and
 the word "county" shall include any riding, division, liberty, and
 place having separate quarter sessions of the peace : 32 & 33 Vict.
 c. 47, s. 1.

As to precepts relating to borough licenses.] The Municipal Cor-
 porations Act, 1882, specially provides for boroughs in respect to these
 precepts as follows :—

In the 9 Geo. 4, c. 61, the expressions "town corporate," "county or
 borough," and "division or place," include every borough having a sepa-
 rate commission of the peace ; and the expression "high constable"
 includes any constable of any such borough to whom the justices of
 the borough direct their precept under that Act : 45 & 46 Vict. c. 50,
 s. 44.

The word "borough" includes every city or town to which the
 Municipal Corporations Act, 1835, 5 & 6 Will. 4, c. 76, applied, and
 every town, district, or place subsequently incorporated : 46 & 47 Vict.
 c. 50, s. 6, 7.

Hence all boroughs having a separate commission of the peace,
 whether these have a separate quarter sessions or not, and whether ten
 justices or not are appointed for such borough, are under the above
 section as regards this matter.

(b) The justices are bound under this section to appoint at least one
 adjourned meeting, though they may appoint more than one, and may

Appndx. 4. *Special sessions for transferring licenses to be appointed.*] And be it further enacted, that the justices assembled at the general or quarter session which shall be holden at Michaelmas next after the passing of this Act, and at the general annual licensing meeting in every subsequent year, shall appoint not less than four nor more than eight special sessions, to be holden in the division or place for which each such meeting shall be holden in the year next ensuing such general annual licensing meeting, at periods as near as may be equally distant, at which special session it shall be lawful for the justices then and there assembled, in the cases and in the manner and for the time hereinafter directed (a), to license such persons intending to keep inn

appoint any convenient place or places for such adjournment. The Legislature seems in 1870 to have thought that justices should facilitate applications, and even where these fail from some inadvertence, should appoint adjournments to enable statutory requirements to be complied with: 33 & 34 Vict. c. 29, s. 11. Nevertheless, in 1872 the Legislature took away altogether the right of appeal to quarter sessions against the refusal of any new license: 35 & 36 Vict. c. 94, Sched. The justices may and should so arrange the adjournment days as to allow a person who has not given notice for the general annual licensing meeting to give such notice in time for the adjournment day: *R. v. Drake*: *R. v. West Riding JJ.*, 34 J. P. 4; L. R. 5 Q. B. 33; 39 L. J. M. C. 17; 10 B. & S. 840. And where, for example, an applicant applied at the general meeting for a spirit dealer's retail license, and failed because he had not then taken out the dealer's license, it was held that he might take out such dealer's license, and give fresh notice for the adjournment day: *Ex parte Maugham*; *R. v. Kirkdale JJ.*, 1 Q. B. D. 49; 40 J. P. 39; 45 L. J. M. C. 36; 33 L. T. 603; 24 W. R. 205. So where premises were not of sufficient annual value at the date of the general meeting, they may be made sufficient in time for the adjournment: *R. v. Montagu*, 49 J. P. 55.

Where, however, the justices have heard and decided the case at the general licensing meeting, they may decline to re-hear the same application on the same materials at the adjournment day, though a fresh notice has been given: *Ex parte Rushworth*, 23 L. T. 120; 34 J. P. 676.

If justices sit more than one day to dispose of the business at the general meeting, their sitting on the second and subsequent days will not be adjournment days within the meaning of this section.

The justices sitting at a general meeting or an adjournment cannot adjourn any matter to a special transfer sessions, as these are two distinct sessions dealing with different classes of business: *R. v. Newcastle JJ.*, 51 J. P. 244.

(a) These words "in the cases, and in the manner, and for the time hereinafter directed," refer to section 14, *post*, and practically make this section and section 14 operate as one section, the latter part of this

kept by other persons being about to remove from Appndx. as they the said justices shall in the execution of the rein contained, and in the exercise of their discretion, and proper persons under the provisions hereinafter be licensed to sell excisable liquors by retail, to be consumed on the premises.(b)

ice to be given of the adjournment of the general licensing meeting and special sessions.] And be it acted, that whenever the justices shall have ordered adjournment of the general annual licensing meeting, or appointed such special sessions as aforesaid, the day, place for holding every such adjourned meeting and special session shall be appointed by precept of the of the said justices directed to the high constable, notices similar in form to those given at the general licensing meeting, to be affixed on the door of the church or on some other public and conspicuous place, and to upon the same parties.(c)

g a mere recital of what will be found in the 14th section at th.

ces ought to fix the transfer sessions at convenient times etween 10th October and the following 10th October, especio meet the difficulties likely to arise between the annual esting which is held some weeks previous, and the 10th This is, however, now of less importance since the decision *wrence* or *Liverpool JJ.*, 11 Q. B. D. 638 ; 47 J. P. 596 ; C. 114 ; 49 L. T. 244 ; 32 W. R. 20, noticed in the notes 4, *post*, p. 203, which allows some applications for transfer after the expiry of the current license.

a "transfer sessions" are usually applied to these intermed sessions, though the statute does not in the 4th and 14th describe them, but the word "transfer" was used in the 11th the schedule now repealed, and is a convenient description t of the sessions. The notice required to be given before all plications is set forth in Licensing Act, 1872, s. 40, and see tion 14 of the present Act, *post*. And the circumstances h a transfer license is granted are stated in section 14, *post*,

ar is also given to petty sessions to give a temporary autho- interval between any two special transfer sessions. See c. 44, *post*.

1 regard to the parties who are applicants only for renewals or certificates, and who are not specially required by the attend pursuant to a notice of opposition served under

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6. *What justices shall be disqualified from acting.* [And be it further enacted, that no justice who shall be a common brewer, distiller, maker of malt for sale, or retailer of malt or of any excisable liquor, or who shall be concerned in partnership with any common brewer, distiller, maker of malt for sale, or retailer of malt or of any excisable liquor, shall act in, or be present at any general annual licensing meeting, or at any adjournment thereof, or at any special session for granting or transferring licenses under this Act, or shall take part in the discussion or adjudication of the justices, upon any application for a license or upon any appeal therefrom ; and no justice shall act upon any of the aforesaid occasions in the case of any house licensed, or about to be licensed, under this Act, of which such justice shall be the owner, or for the owner of which he shall be manager or agent, or of any house being in whole or in part the property of any common brewer, distiller, maker of malt for sale, or retailer of malt, or of any excisable liquor, to whom such justice shall be either by blood or by marriage, the father, son, or brother, or of whom such justice shall be the partner in any other trade or calling ; and that every justice who, being hereby disqualified, shall knowingly or wilfully so offend, shall for every such offence forfeit and pay the sum of £100 : provided always, that nothing herein contained shall extend to disqualify any justice (not otherwise disqualified, and having no beneficial interest in the house licensed or about to be licensed under this Act), from acting on any of the occasions aforesaid by reason of the legal estate in such house being vested in him as trustee for any person or persons, or for any charitable or public use or purpose whatsoever.](c)

7. *When in liberties, &c., two justices not disqualified do not attend, the county justices may act.* [And be it further enacted that whenever at any of the meetings to be holden as aforesaid for any liberty, county of a city, county of a town, city, or town corporate, there shall not be present at least two justices acting in and for any such liberty, county of a city, county of a

Licensing Act, 1872, section 42, *ante*, p. 75, no such notice need now be given to them for the purpose of their attending ; but an application must always be made by some person duly authorised ; hence, if such application has not been made at the general meeting, it will be useful to continue this notice in those cases in order to remind them : Licensing Act, 1874, section 26.

(a) This section was repealed by the Licensing Act, 1872, Schedule, as to that Act, but the section had been incorporated by 5 & 6 Vict. c. 44, s. 4, and applies to applications at petty sessions under the latter Act, and is not identical with Licensing Act, 1872, section 60.

town, city, or town corporate, who are not disqualified, it shall be lawful for the justices acting in and for the county or counties adjoining to such liberty, county of a city, county of a town, city, town corporate, and not disqualified from acting, to act within such liberty or place, and with the justice or justices thereof not hereinbefore disqualified who shall be present at any such meeting as aforesaid, for the purpose of granting or transferring licenses under or of hearing complaints as to offences against this Act, any law, custom, or usage to the contrary notwithstanding. (b) Appndx.

8. *Powers hereby given to the justices of the county not to extend to the cinque ports.*] Provided always that nothing herein contained shall extend to give the justices of the county or any division thereof any power or authority for the setting of the provisions of this Act in execution within any of the cinque ports, or either of the two ancient towns, or any of the corporate or other members or liberties of the cinque ports or two ancient towns, but that it shall be lawful for the justices of and for each of the principal cinque ports and two ancient towns, and for as hereinbefore disqualified from acting, and none other, to act within and for the same and the liberties thereof not corporate respectively as they have been accustomed, and for them, or any of them (not so as last aforesaid disqualified) to act within each of the corporate members immediately belonging or subordinate to such principal cinque port or ancient town, with the justice or justices of each such corporate member (not so as last aforesaid disqualified), for the purpose of granting or transferring licenses under or of hearing complaints as to offences against this Act, in all such cases in which the justices of the county are hereinbefore empowered or authorised to act with the justice or justices of any liberty, county of a city, county of a town, city, or town corporate. (c)

9. *Questions respecting licenses to be determined, and licenses to be signed, by the majority of justices at the meeting.*] And be it further enacted, that when (at any of the meetings aforesaid) any question touching the granting, with-

(b) The disqualification here mentioned is now set forth for the purposes of this Act in Licensing Act, 1872, section 60. The adjoining county or town corporate seems to be read distributively, and no great act would be required as to which of several adjoining places a justice may for this purpose be taken from. The rule is that a justice of a county or borough can sit at any sessions within his county or borough: *R. v. Beckley*, 20 Q. B. D. 187; 52 J. P. 120.

(c) The Cinque Ports Acts are 51 Geo. 3, c. 36; 18 & 19 Vict. c. 48; & 33 Vict. c. 53; 38 & 39 Vict. c. 66, Sched.; 45 & 46 Vict. c. 50,

Appndx. holding, or transferring any license, or the fitness of the person applying for such license, or of the house intended to be kept by such person, shall arise, such question shall be determined by the majority of justices not disqualified, who shall be present when such question shall arise; and every license granted under the authority of this Act shall be signed by the majority of the justices not disqualified who shall be present when such license shall be granted. (a)

10. *Notice of application for a license to keep a house as a public-house not previously kept as such.* Repealed by Licensing Act, 1872, See Sched. (b)

11. *Notice of application to transfer a license.* Repealed by Licensing Act, 1872. See Sched. (b)

12. *Any person hindered from attending any licensing meeting by sickness may authorise another person to attend for him.]* And be it further enacted, that if any person intended to apply at the general annual licensing meeting, or at any adjournment thereof, or at any special session, for any license to be granted under the authority of this Act, or for the transfer of any license, shall be hindered by sickness or infirmity, or by any reasonable cause, from attending in person at any such meeting, it shall be lawful for the justices there assembled to grant and transfer such license to such person so hindered from attending, and to deliver the same to any person then present who shall be duly authorised by the person so hindered from attending.

ss. 248, 256; 46 & 47 Vict. c. 18, ss. 13, 14; 46 & 47 Vict. c. 39, s. 1. The disqualification referred to formerly set forth in section 6 of the Act of 1828, is now substituted by Licensing Act, 1872, section 60.

See also note to 9 Geo. 4, c. 61, s. 1, *ante*, p. 194.

(a) A justice is not bound to vote, but if he does not intend to vote or cannot vote, he should not sit on the bench with other justices, as confusion and irregularity may result from this: *R. v. May*, 11 Q. B. D. 173; 40 J. P. 645.

If the justices are equally divided they should adjourn the meeting, and that other justices may attend; if they do not, the result is equivalent to a refusal, and the applicant may appeal accordingly. See *R. v. May*, 48 J. P. 440; *R. v. Carnarvon*, 4 B. & Ald. 86; *R. v. Monmouth*, 4 B. & C. 844; 8 B. & C. 137; *R. v. Belton*, 11 Q. B. 380.

The mode of signing the license is now alternative. See 32 & 33 Vict. c. 29, s. 4, sub-sect. 2; Licensing Act, 1872, section 40, sub-sect. 3.

(b) There is no particular form of notice specified in any of the statutes, but the requirements both as to notices for new licenses and as to transfers of licenses are now contained in the Licensing Act, 1872, section 40, *ante*, and in 32 & 33 Vict. c. 27, s. 7, *post*.

the same, proof being adduced to the satisfaction of such persons who are hereby empowered to examine upon oath into the truth of such allegation, that such person is hindered from doing so by good and sufficient cause.(c)

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Term of license.] And be it further enacted, that every license shall be granted under the authority of this Act according to the form in the schedule hereunto annexed (b), and shall be in force in the counties of Middlesex and Surrey from the fifth day of April, and elsewhere from the first day of October, after the granting thereof, for one whole year respectively next ensuing, and no longer; and every license granted for the purposes aforesaid, which shall be granted at any time or place or in any other form than that hereby directed, and hereinafter excepted, shall not entitle any person to obtain an excise license for selling excisable liquors by retail to be drunk or consumed on the premises of the person licensed, and shall be utterly void to all intents and purposes.(d)

Provision for death, change of occupancy, or other contingency—Duration of license granted in event of such contingency—Notice required.] If any person duly licensed under this Act shall (before the expiration of such license) die, or become sick or infirm, or be rendered incapable of acting as an inn, or shall become bankrupt, or if any person so licensed shall die, or the heirs, executors, administrators, or assigns of any person so licensed, shall remove from or yield up the possession of the premises specified in such license; or if the occupier of any premises so licensed shall have neglected to apply at the general annual meeting, or at any adjournment thereof, for a license to be granted to sell excisable liquors by retail, to be drunk or consumed on the premises of such house; or if any house, being kept as an inn by

the said Act, was extended to certificates under the Wine and Beerhouse Act, 34 Vict. c. 29, s. 4, and is further extended by Licensing Act, 1872, section 42. By this Act of 1828, and previous Acts, it was essential that each applicant should appear in person at the meeting, whether he applied for a new license, or a renewal, or for a renewal. That is now rendered unnecessary as to renewals in most cases by the Licensing Act, 1872, s. 42; *Sharp v. Wakefield*, 22 Q. B. D. 20; 58 L. J. M. C. 57; 60 L. T. 130; 37 W. R. 187. The applicant need not appear in person, he must send an agent or messenger, otherwise the justices need not renew the license, and the license shall drop.

Section 42 of the said Act is repealed so far as regards the form of license: see schedule, and section 48. The forms issued by the Secretary of State are in the Appendix at the end of this

Appndx. any person duly licensed as aforesaid, shall be or be about pulled down or occupied under the provisions of any Act for improvement of the highways or for any other public purpose shall be, by fire, tempest, or other unforeseen and unavoidable calamity, rendered unfit for the reception of travellers, and the other legal purposes of an inn; *it shall be lawful* for justices assembled as aforesaid at a special session holden by the authority of this Act for the division or place in which the house so kept or having been kept shall be situate in any of the above-mentioned cases, and in such cases only, to grant to the heirs, executors, or administrators of the person so dying, the assigns of such person becoming incapable of keeping it, or to the assignee or assignees of such bankrupt, or to any tenant or occupier of any house having so become unoccupied, or to any person to whom such heirs, executors, administrators or assigns, shall by sale or otherwise have *bond fide* conveyed otherwise made over his or their interest in the occupation of such house, a license to sell excisable liquors by retail, to be drunk or consumed in such house or the premises thereto belonging; or to grant to the person whose house shall as aforesaid have been or shall be about to be pulled down or occupied for the improvement of the highways or for any other public purpose, or have become unfit for the reception of travellers for the other legal purposes of an inn, and who shall otherwise keep as an inn some other fit and convenient house, a license to sell excisable liquors by retail, to be drunk or consumed therein: Provided always, that every such license shall be in force only from the day on which it shall be granted until the fifth day of April or the 10th day of October then next ensuing as the case may be: Provided also, that every person intending to apply, in any of the above-mentioned cases, at any such special session, for a license to sell excisable liquors by retail, to be drunk or consumed in a house or premises thereunto belonging in which excisable liquors shall not have been sold by retail, to be drunk or consumed on the premises, by virtue of a license granted at the general annual licensing meeting next before such special session, shall on some one Sunday within the six weeks before such special session, at some time between the hours of ten in the forenoon and of four in the afternoon, affix or cause to be affixed on the door of such house, and on the door of such church or chapel of the parish or place in which such house shall be situate, and where there shall be no church or chapel or other public and conspicuous place within such parish or place, such and the like notice as is hereinbefore directed to be affixed: and every person intending to apply at the general annual licensing meeting for a license to sell excisable liquors by retail, to be drunk or consumed in a house not theretofore kept as an inn, and

e manner serve copies of the said notice on one of the overseers of the poor and on one of the constables or other peace officers of such parish or place.(a) **Appndx.**

the words were *repealed* by 51 & 52 Vict. c. 57, Sched. and omitted in the text.]

[This section applies not only to publicans' licenses, but to all licenses under the Wine and Beerhouse Acts, 33 & 34 Vict. c. 29, sub-section 5, and to certificates for spirits and liqueurs, Licensing Act, 1872, section 69; and for sweets, Licensing Act, 1872, section 74. The only enactment which provides for transfers of justices' licenses, is to say, the substitution of a new person or a new house, when one of the incidents here mentioned occurs during the currency of use.

as for applying for transfer and notice.] The authority to sit on certain days for transfer sessions not exceeding eight during each licensing year, is given by section 4, *ante*, and the cases that may arise with are here set out. Before any application can be made notices must be given pursuant to Licensing Act, 1872, section 40, section 2. See notes to that section, *ante*, p. 72. And the notice at the end of this section may sometimes be required also if the house has not been licensed before. See notes, *ante*, p. 73.

where a new tenant has come into the premises and has failed to make a transfer, there is nothing to prevent a second new incoming tenant making a second application and so on, during the licensing year, for the justices may accept one person though they may have rejected another, and the license once granted continues in existence till the next October: *Re Todd*, 3 Q. B. D. 407; 42 J. P. 662; 47 L. M. C. 89. It is true that if the license has been forfeited no such re-licensing can be made: *R. v. West Riding JJ.*, 21 Q. B. D. 258; 47 L. P. 455; 57 L. J. M. C. 103; 36 W. R. 258. But in the additional case specified in Licensing Act, 1874, s. 15, *ante*, p. 169, there seems to be no doubt, whether a succession of new incoming tenants could apply after the other: *Sterens v. Sharnbrook JJ.*, 53 J. P. 423.

The application under this section is usually made before the expiration of the license which is proposed to be transferred or transmitted, the object being to provide for some contingency happening between the general annual licensing meetings, at which alone a license or a renewal can be obtained, and which license positively lapses on a fixed day in the year. If, however, the events mentioned have all happened during the current year, such as the death or removal of one tenant and the entry of another into the licensed premises, then the application may be made at any time after the expiration of the current license, at least within the year next after the lapse of the current license, the date depending on the happening of events, and not on the date at which the remedy is asked for. *R. v. Lawrence*, or *Liverpool JJ.*, 47 L. B. D. 638; 47 J. P. 596; 52 L. J. M. C. 114; 49 L. T. 244; 47 L. R. 20. Though it has been usual to call the license granted

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under this section a transfer, and it has been so described in Licensing Act, 1872, s. 74, *ante*, p. 129, yet it is in strictness simply a grant of a license to some person different from the person who held it before, or to the same person in respect of a different house which is authorised when the events happen which are described in section 14. In some cases it may even be an advantage, especially near the end of the current license, to postpone the application after its expiration; for if the justices make the transfer before the 10th of October, the license so transferred will usually end on the 10th of October. *R. v. Northumberland JJ.*, 43 J. P. 271.

Discretion of justices as to transfers.] The general rule is, that justices have the same discretion, but not more, as to the grant of new licenses, and as to the renewal of licenses, and that discretion is as to the great majority of cases absolute, as for example, to publicans' licenses, all in-door beer and wine licenses first granted since 1869. The leading rule as to publicans' licenses was discussed in *Sharp v. Wakefield*, 22 Q. B. D. 239; 53 J. P. 20; 58 L. J. M. C. 60; L. T. 130; 37 W. R. 187; and is equally applicable to transfers. See notes to section 1, *ante*, p. 189.

But there are several exceptions where the justices have a discretion limited to the four grounds specified in 32 & 33 Vict. c. 37, s. 8, *post*; and the rule being, that if the discretion was limited to renewals, or new licenses, then it is equally limited as to transfers. See *Simmonds v. Blackheath*, 17 Q. B. D. 765; 50 J. P. 742; 55 M. C. 166; 35 W. R. 167. Accordingly the discretion of justices is limited as to in-door beer houses, in-door wine houses, and in-door houses, licensed since 1869: 32 & 33 Vict. c. 37, s. 19.

With regard to out-door licenses for wine or spirits, or cider, or ale, the discretion of justices is still limited both as to new licenses and renewals: 32 & 33 Vict. c. 27, s. 8; 35 & 36 Vict. c. 94, s. 74; and hence equally limited as to transfers: *Simmonds v. Blackheath*, *supra*.

Where a spinster who held a license, married and the husband applied for a transfer to himself under section 14, it was held to be unnecessary that the license remained valid; *Hazell v. Middleton*, 45 J. P. 540.

In applications for transfers notice must be given pursuant to 35 & 36 Vict. c. 94, s. 40, the character of the transferee required to be proved, and is usually a leading requirement. Any person who opposes the applicant for transfer, and it is usual to do so by evidence as to misconduct of previous license holders. Where the discretion of justices is limited to the four grounds, the transfer is usually refused on one or other of those four grounds set forth in 32 & 33 Vict. c. 37, s. 8. In general, evidence as to the bad character of a previous holder is ought not to have much weight on a transfer application. *Hull JJ.*, 47 J. P. 820.

There is, however, in all applications for transfer an appeal to the county quarter sessions, if the transfer is refused, so that a justice may be corrected and additional evidence given on both sides. See section 27, *post*.

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NOTE.

cases as to transfers.] The following cases illustrate this section as applications for transfers :

A holder of a certificate for a beer license in Middlesex removed on 14th February. The next general annual licensing meeting was held on 6th March. The old tenant, without the new tenant's knowledge, then applied for renewal, but was refused. The new tenant, who entered on 14th February, did not apply on 6th March, but after proper notices, applied, under 9 Geo. 4, c. 61, s. 14, at the special transfer session on 12th April. He was held entitled to the certificate under 9 Geo. 4, c. 61, s. 14, and 33 & 34 Vict. c. 29, s. 4, sub-sect. 5 : *v. Middlesex, JJ.*, 40 L. J. M. C. 184 ; L. R. 6 Q. B. 781 ; 25 L. T. 35 J. P. 599 ; 19 W. R. 960.

W., the holder of a country beerhouse license, at the general annual licensing meeting on the previous 25th August, applied for renewal of his certificate, but was refused. He occupied till 13th October, and was succeeded by S., who then applied at the next special sessions on 4th January, under 9 Geo. 3, c. 61, s. 14. Held, that the special sessions had no jurisdiction, as W. had remained in possession till after the time expired : *Simpkin v. Birmingham JJ.*, 41 L. J. M. C. 102 ; L. R. 7 Q. B. 482 ; 26 L. T. 620 ; 20 W. R. 702 ; 36 J. P. 709.

T., a new tenant of an alehouse in Middlesex, applied at the adjourned general meeting for a license and was refused. At that date he could not have appealed to quarter sessions but did not do so, and after the present license expired applied again to transfer sessions. Held, his only remedy being the appeal, he could not apply under section 14 : *R. Taylor*, L. R. 7 Q. B. 487 ; 37 J. P. 101 ; 42 L. J. M. C. 13.

R., a new tenant in a country public-house, who had entered on 4th September, applied at the special transfer sessions on 20th November. He was refused, when the justices refused. R. then appealed to quarter sessions, but they refused also. The court held it was discretionary in the justices both at special sessions and at quarter sessions to refuse the license : *R. v. Rowell, Rowell v. Norfolk, JJ.*, 37 J. P. 103 ; L. R. 7 Q. B. 490 ; 41 L. J. M. C. 175 ; 26 L. T. (N.S.) 732.

The holder of a country license gave up possession on 11th September. B., who entered and applied to the transfer sessions on 25th September, and was refused. B. left the house on 28th September, and G. entered and applied to the transfer sessions on 23rd October, and was refused. T. next entered on 29th November, and applied to the transfer sessions on 22nd January, and was refused for want of jurisdiction, and the Q. B. held the justices right : *Re Todd*, 3 Q. B. D. 77 ; 47 L. J. M. C. 89 ; 42 J. P. 662. But this case has been overruled by *R. v. Liverpool JJ.*, *R. v. Lawrence*, *ante*, p. 203.

C. having a lease of licensed premises at M. till July, 1879, began in 1876 to build a new house of his own at I. for which he got a provisional license and then a confirmation of that license in 1877, and then dropped the license at M. A new tenant entered M. in 1879 and immediately applied for a new license in 1879, and in each year till 1883, and was always refused. After the decision of *R. v. Lawrence*, 11 Q. B. D. 8, the same new tenant applied for a transfer of the license at M. which had expired in 1877. Held, that the justices had a discretion to

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refuse the transfer, and could not be compelled by *mandamus* to the application: *Ex parte Minett*, 51 J. P. 84.

The licensed person died on 27th September. No new tenant came till after 10th October, and an application was not made for a transfer till the 4th December, and the court held there was no jurisdiction the license had been allowed to lapse: *White v. Coquetdale*, 7 Q. B. 238; 50 L. J. M. C. 128; 44 L. T. 715; 45 J. P. 539. This case was however, been overruled by *R. v. Liverpool JJ.*, *R. v. Lawrence*, p. 203.

If the license has been forfeited, there can be no application for a transfer: *R. v. West Riding JJ.*, 21 Q. B. D. 284; 45 J. P. 455; 57 L. J. M. C. 103; 36 W. R. 258. So if the license has been discontinued for a year or more there can be no application for renewal or transfer, but only one for a new license: *R. v. Curzon*, 8 Q. B. 400; 42 L. J. M. C. 155; 37 J. P. 774; 29 L. T. 32; 21 W. R. 886.

K., the license holder, abandoned possession, and at next general meeting landlord asked for renewal in K.'s name or his own, but justices refused. P., a new tenant, entered after general meeting at next transfer sessions asked for transfer, which was refused, and appealed to quarter sessions and was again refused. Held, the decision was final and that P. could not apply again at next meeting for renewal: *R. v. Newcastle JJ.*, 51 J. P. 244.

A licensed house had been pulled down for public improvements the licensed person chose another house in all respects well fitted for the business, but the justices when asked to make the transfer considered that there were already sufficient houses in the new locality and refused to transfer on that ground alone, and the High Court held that their discretion could not be interfered with: *Boodle v. Birmingham JJ.*, 45 J. P. 635.

Where a licensed house was pulled down in order to anti public improvements in a locality, this was held not to come within the powers of the justices to grant a transfer: *R. v. Northumbria JJ.*, 43 J. P. 271.

The notice at the end of the 14th section means the notice for license under Licensing Act, 1872, s. 40, in those cases. See Act, s. 40, and notes, *ante*, p. 72.

Contracts of sale of licensed houses.] Cases of transfer of license are often mixed up with the sale of the business of a public-house: *Claydon v. Green*, L. R. 3 C. P. 511; 37 L. J. C. P. 236; 18 W. R. 607; 16 W. R. 1126, the vendor of a public-house agreed to sell his business and assign the license on 5th February, 1867. It turned out that the licenses were held in the name of the vendor's son, who had gone to America, and was not heard of, and the business had been carried on in the name of another son, no indorsement or application for transfer being deemed possible. The court held that the vendor, not being able to perform his contract, the purchaser was entitled to recover back his deposit. In *Day v. Lukke*, L. R. 5 Eq. 33; 18 L. J. Ch. 330; 16 W. R. 719; 32 J. P. 499, a vendor covenanted

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transfer the license on a given day. At the day in question the holder of the license could not be got to authorise an application to justices, so a transfer was not obtained. It was held that the vendor having failed to carry out the contract, the purchaser could repudiate the contract. So when the license cannot be secured the contract for the public-house as a going concern may always be repudiated: *Stes v. Gale*, 41 L. J. Ch. 14; L. R. 7 Ch. 12; 25 L. T. 524; 20 B. 70. And where parties contract on the footing of a license being in force, and it appears that the existing license is subject to qualifications, the contract cannot be enforced: *Modlen v. Snowball*, 4 G. F. & J. 143.

At the expiration of the lease the licensee may be entitled to the goodwill according to his covenant, in which case the goodwill may be said to be valued. See *Llewellyn v. Rutherford*, L. R. 10 C. P. 1; 44 L. J. C. P. 281; 32 L. T. 610. Or the goodwill may be said to go with the house: *Ex parte Pinnutt*, 16 Ch. D. 226; 50 J. Ch. 212; 44 L. T. 226; 29 W. R. 129. But the goodwill carries no right to get transfer of license, if procurable: *Rutter v. Daniel*, L. T. 684; 30 W. R. 801.

A covenant is often given by a vendor of the goodwill not to carry on business within a certain distance. Such distance is, unless the context varies it, measured in a straight line: *Moufflet v. Cole*, L. R. 8 Ch. 32; 42 L. J. Ex. 8; 27 L. T. 678; 21 W. R. 175.

On a sale of a public-house, as time is of the essence of the contract, the sale may go off for want of justices' license: *Cowles v. Gale*, L. R. 10 Ch. 12; 41 L. J. Ch. 14; 25 L. T. 524; 20 W. R. 70. If lease contains covenant to leave assignment with ground landlord's solicitor, the sale goes off: *Brookes v. Drysdale*, 3 C. P. D. 52; 37 L. T. 467; 21 W. R. 331. If at termination of lease goodwill is to be allowed to the tenant, the tenant may sue landlord for the same: *Llewellyn v. Rutherford*, L. R. 10 C. P. 456; 44 L. J. C. P. 281; 32 L. T. 610. If there is a covenant on bankruptcy of lessee for landlord to re-enter, the lease does not pass to the trustee of bankrupt, for a license is not a property: *Re Britnor*, 46 L. J. Bk. 85; 25 W. R. 560. See a sale of a public-house describing hotel as "let to a most desirable tenant:" *Smith v. Land Corporation*, 28 Ch. D. 7; 49 J. P. 182; 51 L. T. 718. As to sale of trade fixtures in a public-house, see *Lea v. Whittaker*, L. R. 10 C. P. 70; 27 L. T. 676; 37 J. P. 183; 21 W. R. 230.

A signboard of a public-house erected on a post by the wayside is really an incorporeal hereditament which passes with the house: *Ware v. Metropolitan Board of Works*, L. R. 9 Q. B. 296; 38 J. P. 183. So may a signboard be fixed to an adjoining house: *Moody v. Rogers*, 12 Ch. D. 261; *Francis v. Hayward*, 22 Ch. D. 177; 47 J. P. 517.

A valuable picture painted by an artist and fixed outside an inn as a signboard was held to belong to the landlord as a fixture: *Ex parte D'Eresby*, 44 L. T. 781; 29 W. R. 527.

A power given in a lease to distrain for non-payment of goods supplied is held to be a bill of sale: *Pulbrook v. Ashby*, 56 L. J. Q. B. 376; 25 W. R. 779.

See also, further, as to covenants, section 31 and notes, *post*.

Appndx. 15. *Fees to be paid for license—Penalty for taking large fees.*] And be it further enacted, that it shall be lawful for the clerk of the justices as well at the general annual licensing meeting as also at any special session to be holden under this Act to demand and receive from every person to whom a license shall be granted under this Act, for the trouble of such clerk, and for all expenses connected therewith, the sums following, and no more: *videlicet*, for the petty constable, or other peace officer, for serving notices, and for all other services hereby required of any petty constable or other peace officer, the sum of one shilling; for the clerk of the justices, for the license, the sum of five shillings and for preparing the precepts to be directed to the high constable, and notices to be delivered by the petty constable, required by this Act, the sum of one shilling and sixpence; and every such clerk who shall demand or receive from any person for such respective fees in this behalf any greater sum or anything of greater value than the sums hereinbefore specified, being in whole the sum of seven shillings and sixpence, shall for every such offence, on conviction before one justice, forfeit and pay the sum of five pounds.(a)

16. *Persons disqualified to hold licenses.*] And be it further enacted, that no sheriff's officer, or officer executing legal process of any court of justice in any county or place, shall be capable of receiving or using any license under this Act; and that every license granted or transferred to any person exercising any such office shall be void to all intents and purposes.(b)

17. *No excise license to be granted except to a person licensed under this Act.*] And be it further enacted, that

(a) This includes the fees of transfers and renewals as well as the original licenses. Besides these fees there is a fee of 1s. for registration under the Licensing Act, 1872, section 36. These fees apply to certificates for beer, cider, and winehouse and spirit and sweets licenses, except that for renewals of these a fee of 4s. and 1s. only besides the registration fee to be paid: 33 & 34 Vict. c. 29, s. 4, sub-section 3. As to the fees of the petty constable's fees, see 35 & 36 Vict. c. 92, s. 7.

In one case a mayor claimed a fee of 4s. over and above the statutory fees as due under the ancient custom of the borough, but the court held all such customs impliedly repealed, and the sum was recovered back by the licensee: *Morgan v. Palmer*, 2 B. & C. 729.

There is no appeal to quarter sessions against any conviction under this section owing to the repeal of section 27 as to convictions.

(b) Disqualifications are also declared as to beerhouses by 1 Will. c. 64, s. 2; 3 & 4 Vict. c. 61, s. 7. And when felony is committed, 3 & 4 Vict. c. 61, s. 7; 23 Vict. c. 27, s. 22; 33 & 34 Vict. c. 29, s. 1.

license for the sale of any excisable liquors by retail, to be drunk **Appndx.**
consumed on the premises of the person licensed, shall be
granted by the commissioners of excise, or by any officer of excise,
any person whatsoever, unless such person shall have pre-
viously obtained from the justices a license under this Act, and
such said license of such justices shall be retained by such
person, after being produced to the commissioners or officers of
excise; and every license granted by the commissioners of excise,
by any officer of excise, contrary to this provision, shall be null
and void to all intents and purposes.(c)

18. Penalty for selling excisable liquors by retail *without*
license. *Repealed* by Licensing Act, 1872. See Schedule, and
section 3.

19. Licensed persons to use *standard measures* in sale of
liquors. *Repealed* by Licensing Act, 1872. See Schedule, and
section 8.

20. Houses to be *closed* by order of justices in cases of *riot*, &c.
Repealed by Licensing Act, 1872. See Schedule, and section 23.

21. Penalties for *offences* against tenor of licenses. *Repealed* by
Licensing Act, 1872. See Schedule.(d)

22. Proceedings at the session in certain cases to be carried on
by the petty constable. *Repealed* by Licensing Act, 1872. See
Schedule.

23. Penalty on witnesses not attending. *Repealed* by Licensing
Act, 1872. See Schedule.

24. Penalties of justices how to be recovered and applied.
Repealed by 51 & 52 Vict. c. 27, Sched.

25. Other penalties how to be recovered. *Repealed* by Licensing
Act, 1872. See Schedule.

26. How penalties are to be applied. *Repealed* by Licensing
Act, 1872. See Schedule.

(c) A similar enactment has been extended to beerhouses, cider-
houses, wine licenses, off spirit licenses, and sweets. And the rule is as
in all justices' licenses, that when such licenses become void or are
revoked the excise license becomes void also: Licensing Act, 1872,
63, *ante*, p. 116.

(d) Nearly all offences are now set forth in Licensing Acts, 1872,
574.

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27. *Appeal may be made to the quarter sessions—[Judgment of the quarter sessions to be final.]* And be it enacted, that any person who shall think himself aggrieved by any act of any justice done in or concerning the execution of the Act, may appeal against such act to the next general or quarter sessions of the peace holden for the county or place where the cause of such complaint shall have arisen, unless such sessions shall be holden within twelve days next after such act shall have been done, and in that case to the next subsequent sessions as aforesaid, and not afterwards, provided that such person give to such justice notice in writing of his intention to appeal, and of the cause and matter thereof within five days next after such act shall have been done, and *seven days*(a) at the least before such session, and shall within such five days enter into a recognizance, with two sufficient sureties, before a justice acting in or for such county or place as aforesaid, conditioned to appear at said session, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognizance being entered into, the justices before whom the appeal shall be entered into shall liberate such person, if in custody for any offence in reference to which the act intended to be appealed against shall have been done; and the court at such session shall hear and determine the matter of such appeal, and shall make such order therein, *with or without costs*, as to the said court shall seem meet; and in case the act appealed against shall be a *refusal to grant* or to transfer any license and the judgment by which such act was done be reversed, it shall be lawful for the said court to grant or to transfer such license in the same manner as if such license had been granted at the general annual licensing meeting or had been transferred at a special sessions; and the judgment of the said court shall be final and conclusive in all intents and purposes; and in case of the *dismissal* of such appeal or of the affirmance of the judgment on which such act was done and which was appealed against, the said court shall adjudge and order the said judgment to be carried into execution, and the costs awarded to be paid, and shall, if necessary, issue process enforcing such order: Provided that no justice shall act in

(a) This, so far as regards the *seven days*, must be taken as repealed by 12 & 13 Vict. c. 45, s. 1, which requires in some cases (including this) fourteen days' notice before the sessions. The consequence will be that unless the next sessions are held at such a time as to admit of fourteen days' notice, then the appeal must be to the next subsequent sessions: *R. v. Maule*, 35 J. P. 596; 47 & 48 Vict. c. 24, s. 1, sched.

termination of any appeal to the general or quarter Appndx.
aforesaid from any act done by him in or concerning
on of this Act: Provided also, that when any cause of
hall have arisen within any liberty, county of a city,
town, city, or town corporate, it shall be lawful for
who shall think himself so as aforesaid aggrieved, to
not any such act as aforesaid, if he shall think fit, to
sessions of the county within or adjoining to which
or place shall be situate, subject to all the provisions
contained.(b)

section is repealed so far as relates to appeals against the
ant a new license, and in all other respects, except that it
orce as regards appeals against a refusal of the renewal or
censes.

aggrieved includes a person whose license has been refused,
always appeal in those cases where an appeal still exists :
, 2 Q. B. 96. But a rival who has already a licensed house
newly licensed cannot appeal against such new license, for
person aggrieved in this sense: *R. v. Middlesex JJ.*, 3
3; *R. v. Surrey JJ.*, 52 J. P. 423.

owner may appeal.] The owner may join in the appeal
usal of renewal along with the license holder who is his
it has been held that a mortgagee of the premises may
st a refusal of the renewal of the license if the licensee
horised such mortgagee to take all steps to preserve the
though the licensee declines to appeal himself: *Garratt v.*
IJ., 12 Q. B. D. 620; 53 L. J. M. C. 81; 48 J. P. 358; 32
But the owner is not entitled to ask a license in his own
he is about to keep the premises as a licensed house: 9
, s. 1. In the cases, however, mentioned in Licensing Act,
nte, p. 169, the owner is expressly authorised to apply for
nd he may appeal in his own name: *R. v. West Riding JJ.*,
417; 48 J. P. 149; 52 L. J. M. C. 99; *Stevens v. Sharn-*
3 J. P. 423.

l is the only redress against the refusal of a renewal or
license on the merits, and the justices cannot be sued by
st, if no corrupt motive can be proved: *Bassett v. Gad-*
s. 121; nor can a criminal information be filed for like
v. Young, 1 Burr. 556. See notes to section 1, *ante*, p. 189.
ay be a remedy by way of *mandamus*, as to which see
Liverpool JJ., 42 J. P. 406, and notes to section 1, *ante*,
otes to Licensing Act, 1872, s. 42, *ante*, p. 78.

ant cannot be deprived of his appeal by a rule made at
ons that the court will hear no appeal unless entered three
he first day of sitting: *R. v. Pawlett*, L. R. 8 Q. B. 491;
; 29 L. T. 390.

Appndx. 28. *Justices to bind parties to appear to give evidence at quarter sessions.*] And be it further enacted, that when a

To what sessions appeal lies.] The appeal lies to the county sessions, and not to the recorder of a borough, against the refusal to transfer or renew a license: *R. v. Deane*, *R. v. Reading JJ.*, 2 Q. B. 342. *R. v. Recorder of Bristol*, 4 E. & B. 265; 24 L. J. M. C. 43; 342. The Municipal Corporations Act, 1882, 45 & 46 Vict. c. 59 expressly enacts that the recorder shall not by virtue of his official power to grant any license or authority to any person to keep a public-house, or victualling house to sell excisable liquors by retail at county quarter sessions to which the appeal is taken must decide the appeal. He cannot adjourn the hearing to a subsequent sessions: *R. v. Bowdler*, 1 Q. B. 379; 12 J. P. 232; 17 L. J. M. C. 70; *Bowman v. L. J.*, 1 E. & B. 47; 22 J. P. 5; 26 L. J. M. C. 57. But there is no power to prevent the quarter sessions from adjourning a particular case for a certain number of days if necessary, so long as they decide it before the next following quarter sessions: *R. v. Cambridge Union*, 1 B. & S. 61; 30 L. J. 137; 4 L. T. 212; 9 W. R. 599.

When the licensing justices refuse the license on the ground that the applicant of good character was not sufficiently proved, the appellant may adduce additional evidence of good character: *R. v. Pilgrim*, 1 B. & S. 89; 40 L. J. M. C. 3; 23 L. T. 410; 19 W. R. 99; 35 J. P. 137. *Ex parte Morgan*, 23 L. T. 605; 35 J. P. 37.

Notice of appeal.] When an appeal is competent the notice of appeal must be served on at least two of the justices who joined in the refusal: *R. v. Cheshire JJ.*, 11 A. & E. 139. And service on the clerk of the justices is not sufficient: *Ex parte Curtis*, *Curtis v. Buss*, 3 Q. B. 13; 41 J. P. 87; 37 L. T. 533; 47 L. J. M. C. 35; 26 W. R. 5. Service on the justice may be either personal or at his dwelling: *R. v. North Riding JJ.*, 7 Q. B. 154; 14 L. J. M. C. 91.

As to costs of appeal, see section 29 and notes.

If the justices are *equally divided*, see notes to section 29, p. 190.

Statement of case by justices.] No case could formerly be stated by licensing justices under 20 & 21 Vict. c. 43, as regards granting or refusing a license: *West v. Potts*, 34 J. P. 760; *Garretty v. Potts*, 6 Q. B. 88n; 40 L. J. M. C. 1; 23 L. T. 554; 19 W. R. 127; 168. But if an appeal be taken to quarter sessions, the justices can always state a case for the opinion of the High Court. And the person aggrieved seems entitled to demand from licensing justices a case for the opinion of the High Court on any point of law: 20 Vict. c. 49, ss. 33, 50; 47 & 48 Vict. c. 43, s. 7.

As all the convictions for offences relating to the keeping of houses will now take place under the Licensing Act, 1872, and under that Act provides an appeal, that section and the Summary Jurisdiction Acts, 1879 and 1882, 42 & 43 Vict. c. 49, s. 19, and 47 & 48 Vict. c. 43, will govern the procedure in respect of such appeals.

ave given notice of his intention to appeal as aforesaid, **Appndx.**
 ave entered into recognizance as hereinbefore directed,
 lawful for the justice before whom such recognizance
 been entered into to summon any person whose evi-
 appear to him to be material, and to require such
 e bound in recognizance to appear at the said general
 sessions, and to give evidence on such appeal; and in
 ch person as aforesaid shall neglect or refuse to obey
 ons, or shall refuse to enter into such recognizance,
 lawful for such justice as aforesaid to issue his warrant
 id such person so neglecting or refusing to obey such
 and to bring him before such justice, and if such person
 ue to refuse to enter into such recognizance, to commit
 common gaol or house of correction of the county or
 hich such justice shall be then acting, there to remain
 all enter into such recognizance, or shall be otherwise
 by due course of law.

rt to adjudge costs in certain cases.] And be it
 cted, that in every case where notice of appeal against
 nt of any justice in or concerning the execution of this
 ave been given, and such appeal shall have been dis-
 he judgment so appealed against shall have been con-
 such appeal shall have been abandoned, it shall be
 he court to whom such appeal shall have been made
 . to be made, and such court is hereby required, to
 l order that the party so having appealed, or given
 s intention to appeal, shall pay to the justice to whom
 shall have been given, or to whomsoever he shall
 ch sum by way of costs as shall in the opinion of such
 ficient to indemnify such justice from all cost and
 tsoever to which such justice may have been put in
 e of his having had served upon him notice of the
 f such party to appeal; and if such party shall refuse
 forthwith to pay such sum, it shall be lawful for the
 to adjudge and order that the party so refusing or
 shall be committed to the common gaol or house of
 there to remain until such sum be paid; and that in
 in which the judgment so appealed against shall be
 shall be lawful for such court, if it shall think fit, to
 d order that the treasurer of the county or place in and
 uch justice whose judgment shall have been so reversed

e appeal against the refusal to renew a license or certificate,
 Revenue may grant a temporary license: Licensing Act,
 53.

Appndx. shall have acted on the occasion when he shall have given judgment shall pay to such justice, or to whomsoever he shall appoint, such sum as shall in the opinion of such court be sufficient to indemnify such justice from all costs and charges whatsoever to which such justice may have been so put; and the treasurer is hereby authorised to pay the same, which shall be allowed to him in his accounts.(a)

(a) *Payment of costs at quarter sessions.*] The costs awarded to be paid by courts of quarter sessions are now directed to be paid to the clerk of the peace, who is to pay them over to the party entitled: 12 & 13 Vict. c. 45, s. 5; 11 & 12 Vict. c. 43, s. 27; *Gay v. Matheson*, 4 B. & S. 440; 33 L. J. M. C. 14; 8 L. T. 674; 11 W. R. 923; 33 J. P. 247; *R. v. Devonport JJ.*, 33 J. P. 614. But an order directing the costs to be paid to the party would not be bad: *R. v. Bissop*, 5 E. & B. 810; 22 L. J. M. C. 127; *R. v. Ely JJ.*, 5 E. & B. 494; 22 L. J. M. C. 1.

In municipal boroughs having no separate court of quarter sessions but a separate commission of the peace, the costs are to be paid to the treasurer of the county and not of the borough: *Winn v. Moorman*, L. R. 4 Exch. 292; 38 L. J. Exch. 200; 33 J. P. 743; 20 L. T. 612. If not paid, then on a certificate of the clerk of the peace a warrant of distress shall be issued: 11 & 12 Vict. c. 43, s. 27; or upon a certified copy of the order of quarter sessions, such order may be removed to the High Court and enforced like a rule of that court: 12 & 13 Vict. c. 45, s. 18.

The court of quarter sessions have power to give costs against the licensing justices if their decision is reversed: *R. v. Devonport JJ.*, 33 J. P. 614. But if the justices do not appear the High Court may quash that part of the order: *R. v. Davidson*, 24 L. J. 22; 35 J. P. 500; *R. v. Goodall*, L. R. 9 Q. B. 557; 38 J. P. 616. But quarter sessions may also under the above section 29, make an order to indemnify the justices whose decision is reversed. The court may give costs of an appeal though they have no jurisdiction to hear the appeal: *R. v. Padwick*, 8 E. & B. 704.

The court of quarter sessions, independently of the above 29th section, may give costs in all cases before them, the Act 12 & 13 Vict. c. 45, s. 5, being a cumulative remedy in that respect: *R. v. Huntley*, 5 E. & B. 172; 23 L. J. M. C. 106. And the court may have a standing order about costs following the event which they may competently sit upon: *Freeman v. Read*, 9 C. B. (N.S.) 301; 30 L. J. M. C. 128; 9 W. R. 141.

Though the costs should not be fixed before the close of the session: *R. v. Long*, 1 Q. B. 740; *R. v. Hants JJ.*, 33 L. J. M. C. 46; 7 L. T. 391; 11 W. R. 122, the opposite party may consent, or if he attends taxation he waives objections: *Freeman v. Read*, 9 C. B. (N.S.) 301, *supra*; *R. v. Mortlock*, 9 Q. B. 459; *Ex parte Watkins*, 5 L. T. 605; 10 W. R. 249. Or if the costs are taxed before or at an adjournment this will be sufficient: *R. v. Hants*, 33 L. J. M. C. 104, *supra*; *Rawnsley v. Hutchinson*, 35 J. P. 501; L. R. 6 Q. B. 305.

ions against justices, &c.] And be it further enacted, **Appndx.** every action against any justice, constable, or other person on account of any matter or thing whatsoever done by him in the execution of his duty or office under this Act shall be commenced within three calendar months after the action or complaint shall have arisen, and not afterwards; and if any person shall be sued for any matter or thing so done in the execution of this Act, he may take a general issue, and give the special matter in evi-

diction to be on oath of witnesses. *Repealed* by Licensing Act, 1872. See Schedule.

man of conviction. *Repealed* by Licensing Act, 1872. See Schedule.

dictions to be returned to the quarter sessions, and to the next court. *Repealed* by Licensing Act, 1872. See Schedule.

it of *certiorari* not to be allowed. *Repealed* by Licensing Act, 1872. See Schedule, and section 54.

commencement of this Act.] And be it further enacted, that this Act shall commence on the tenth day of October next after the passing thereof; and that from and after the commencement of this Act the Acts 5 & 6 Ed. 6, c. 25; 1 Jac. 1, c. 9; 4 and 5; 7 Jac. 1, c. 10; part of 21 Jac. 1, c. 7; 7; 3 Car. 1, c. 3; 9 Geo. 2, c. 23, ss. 14, 15, 20; 24 Geo. 2, s. 24; 26 Geo. 2, c. 13, s. 12; 26 Geo. 2, c. 31; 28 Geo. 2, s. 2; 29 Geo. 2, c. 12, ss. 23, 24; 30 Geo. 2, c. 24, s. 3, c. 46, ss. 20, 21, 22; 32 Geo. 3, c. 59; 38 Geo. 3, c. 39; 39 Geo. 3, c. 86; 48 Geo. 3, c. 143, ss. 7, 10; 4 Geo. 4, c. 1—6, shall be and the same are hereby repealed.(c)

incurred by the quarter sessions or the justices out of session and all costs incurred by any justice, police officer, or person defending any legal proceedings taken against him in any order made or act done in the execution of his duty as justice, police officer, or constable shall, to such amount as may be determined by the standing committee of the county council and quarter sessions so far as they are not otherwise provided for, be paid out of the fund of the county, and the council of the county shall make such payment accordingly: 51 & 52 Vict. c. 41, s. 66.

This Act and these last sections have now nothing to do with the quarter sessions, this section seems superfluous.

This section was repealed by 36 & 37 Vict. c. 91, Schedule, but reference to the series of Acts.

Appndx. **36.** *Act not to affect the two universities; nor to a time of licensing in London;—nor any law of excise;—to prohibit the sale of beer at fairs in certain counties.* Provided always, and be it further enacted, that nothing in this Act contained shall extend to alter or in any manner to take away any of the rights or privileges of the universities of Oxford and Cambridge, or the powers of the chancellors or vice-chancellors of the same, as by law possessed under the respective charters of the said universities or otherwise; or the master, wardens, freemen and commonalty of the vintners of the city of London, but shall extend to those freemen of the said company of vintners who have obtained the same by redemption only; nor to alter the time of granting licenses for keeping inns in the city of London. Provided also, that nothing in this Act contained shall alter any law relating to the revenue of excise, except so far as the same may be hereby expressly altered and otherwise provided for; nor to prohibit any person from selling beer in booths or other places at any time and within the limits of the ground or place in which is holden any lawful fair in like manner as such was authorised to do before the passing of this Act.^(a)

37. *Rules for the interpretation of this Act.]* A order to remove doubts as to the meaning of certain words in this Act, be it enacted, that the word “justice” shall be deemed to mean justice of the peace; and that the words “treasurer of a county or place” shall be deemed to include any officer acting in such capacity, or charged with the receipt and expenditure of moneys from and out of which the cost of public prosecutions have been usually defrayed; that the words “peace officer” shall be deemed to include any petty constable, tithingman, constable, borough, beadle, or bailiff; that the words “parish officer” shall be deemed to include any churchwarden, chapelwarden, or overseer of the poor; and that the said words “justice,” “treasurer of the county or place,” “peace officer,” “parish officer,” and the words “high constable,” and the words “petty constable,” and the words “overseer of the poor,” and the words “clerk of justice” shall each be deemed to include any person acting as such any number of justices, treasurers, peace officers, parish officers, high constables, petty constables, overseers of the poor, and clerks of justices; and that the word “person” and the word “persons” shall be deemed to include any number of persons and persons respectively; and that the meaning of the aforesaid several words shall be restricted although the same may be subsequently referred

(a) As to selling at fairs, see now Licensing Act, 1874, *sect. 143 ante*, p. 143.

singular number and masculine gender only ; and that the word "notice" and the word "license," and the word "adjournment," and the word "day," and the word "time," and the word "house," and the word "place," shall each be deemed to include any number of notices, licenses, adjournments, days, times, places, or places ; and that the word "county," and the words "county or place," shall be deemed severally to include any county, riding, division of the county of Lincoln, hundred, division of a county, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate ; and the words "division or place," shall be deemed to include any division of a county or riding, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate ; and the words "parish or place" shall be deemed to include any parish, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own poor ; and that the word "inn" shall be deemed to include any inn, alehouse, or victualling-house ; and that the words "inn, alehouse, or victualling-house" shall be deemed to include all houses in which shall be sold by retail any excisable liquor to be drunk or consumed on the premises ; and that the words "excisable liquor" shall be deemed to include any beer, or other fermented malt liquor, sweets, cider, perry, me, or other spirituous liquor which now is or hereafter may be charged with duty either by customs or excise ; and that the word "penalty" shall be deemed to include any fine, penalty, or forfeiture of a pecuniary nature ; and that the meaning of the said several words shall not be restricted, although the same may subsequently referred to in the singular number only.

Appndx.

1 WILL. 4, CAP. 64.

AN ACT to permit the general Sale of Beer and Cider by Retail in England.
[23rd July, 1830.]

All persons licensed under this Act may sell beer by retail. Whereas it is expedient, for the better supplying the public with beer in England, to give greater facilities for the sale thereof than are at present afforded by licenses to keepers of inns, houses, and victualling-houses : Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the tenth day of October, one thousand eight hundred and thirty, it shall and may be lawful for any and every person, who shall obtain a license for that purpose under the pro-

al process of any court of justice ; and that any license
 y such person shall be void to all intents and pur-
 list or register of every license so granted, specifying
 d place of abode of every person licensed, and the
 scription of the house mentioned in such license,
 t at the excise office with respect to all licenses
 e commissioners of excise or any person authorised
 at the office or dwelling-house of every collector and
 excise in their and his respective collections and
 l such list or register shall at all times be produced
 e open to the inspection and perusal of any magis-
 ounty or place where such license shall be granted
 ch house shall be situate ; and a copy of such list
 all once in every calendar month be transmitted by
 illector or supervisor to the clerk of the magistrates
 t in which such license shall be granted ; and any
 tract from such list or register, which shall or may
 e required by the clerk to the magistrates, shall be
 by such collector or supervisor, whenever thereto

Appendx.

*e duty shall be under the management of the
 rs of excise, and carried to the consolidated*

requiring license shall enter into a bond, with
 payment of penalties. *Repealed* by 30 & 31 Vict.

son licensed to sell beer shall be competent to be a
aled by 30 & 31 Vict. c. 90, s. 13.

licensed to retail beer shall put up descriptive
aled by Licensing Act, 1872. See Schedule and

tion has also been greatly qualified by the later statutes
 valuation qualification ; see 3 & 4 Vict. c. 61, s. 2, and
 1872, sections 46, 47.

license was obtained under this Act by the fraud of a
 was held to be not void : *R. v. Minshall*, 1 N. & M. 277.
 hird party carried on the business, using the name of the
 , this was held not a void license or fraudulent : *Brooker*
 & Ad. 1052 ; *Meux v. Humphries*, 1 N. & M. 132.

expiration of licenses was altered to 10th October, by
 s. 91, s. 14, *post*.

Appndx. 7. *No person shall sell beer after expiration of his license—License may be renewed yearly—Penalty on selling out license, 20l.]* And be it further enacted that no person shall sell any beer by retail under the provisions of this Act at any time after the expiration of any license granted under this Act, nor in any house or place not specified in such license: Provided always, that it shall be lawful for any person so licensed to take out a fresh retail license for the selling beer by retail before the expiration of any former retail license, and so from year to year; and if any person not being duly licensed to sell beer, or the keeper of a common inn, alehouse, or victualling-house, shall sell any beer by retail without having an excise retail license issued authorising such person so to do, or after the expiration of such license, or without renewing such license in the manner so said, or in any house or place not specified in such license, any such person so licensed shall deal in or retail any spirits, every such person so offending shall for every such offence forfeit and lose the sum of twenty pounds. [See Licensing Act, 1872, section 3 and section 59. Also Licensing Act, 1872, section 53.]

8. *Such penalty may be recovered as other excise penalties.] (a)*

9. *Powers of Excise Act, 7 & 8 Geo. 4, c. 51 extended to this Act.] (b)*

10. *Proviso for partners—License shall not extend to any other house.]* Provided always, and be it further enacted, that persons trading in partnership, and in one house or place only, shall not be obliged to take out more than one license for any one year, for selling any beer by retail under the provisions of this Act: Provided also, that no one license which is granted by virtue of this Act shall authorise and empower any person or persons to sell any beer, ale, or porter under the provisions of this Act, in any house or place other than those mentioned in such license for selling beer, ale, and porter by retail under the provisions of this Act, and in respect of which such license shall be granted.

(a) See also 42 & 43 Vict. c. 49, ss. 32, 53.

(b) See also 6 Geo. 4, c. 81, ss. 25, 28, 32, as to legal proceedings; Geo. 4, c. 53, ss. 3, 61, 70, 84, 128; 4 & 5 Will. 4, c. 51, ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

Appndx.

1. Houses to be closed by order of justices in cases of riot, *Repealed* by Licensing Act, 1872. See Schedule, and ion 23.

2. Standard measures to be used. *Repealed* by Licensing Act, 1872. See Schedule, and section 8.

3. Penalty on retailers permitting drunkenness, &c., in their shops. *Repealed* by Licensing Act, 1872. See Schedule, and ion 13.

4. Retailers' houses shall not be open before four in the morning, nor after ten in the evening; nor on Sundays between 1, or 3 and 5 in the day. *Repealed* by 3 & 4 Vict. 1, s. 14.

5. Penalties recoverable before two justices in petty sessions, within three months after offence committed. *Repealed* by Licensing Act, 1872. See Schedule.

6. Appeal to the quarter sessions. *Repealed* by Licensing Act, 1872. See Schedule, and section 52.

7. Court to adjudge costs of appeal in certain cases. *Repealed* by Licensing Act, 1872. See Schedule.

8. Proceedings at the session in certain cases to be carried on by the petty constable. *Repealed* by Licensing Act, 1872. See Schedule.

9. In default of payment of penalties, proceedings may be had against the sureties. *Repealed* by Licensing Act, 1872. See Schedule.

10. Penalty on witnesses not attending. *Repealed* by Licensing Act, 1872. See Schedule.

11. Penalties may be levied by distress. *Repealed* by Licensing Act, 1872. See Schedule.

12. Application of penalties. *Repealed* by Licensing Act, 1872. See Schedule, and sections 55, 56, 57.

13. *If justices of liberties, &c., do not attend at sessions, county justices may act.] (c)*

See 9 Geo. 4, c. 61, s. 7, which is identical.

Appndx. 24. Powers hereby given to justices of counties not to extend to the cinque ports.] (a)

25. Form of conviction. Repealed by Licensing Act, 1872. See Schedule.

26. Convictions to be returned to the quarter sessions, and filed of record. Repealed by licensing Act, 1872. See Schedule.

27. Writ of *certiorari* not to be allowed. Repealed by Licensing Act, 1872. See Schedule, and section 54.

28. Actions against justices, &c.] (b)

29. Act not to affect the two universities nor the Vintners Company in London;—not to prohibit the sale of beer at fairs as heretofore.] (c)

30. Licenses to retail cider and perry may be granted under the regulations of this Act, on payment of 11. 1s. duty—Provisions and penalties of this Act with respect to the sale of beer to apply to the sale of cider and perry—Persons licensed to retail beer may also retail cider and perry.] And whereas it is expedient that the sale of cider and perry by retail should be licensed in like manner and should be subject to the like regulations as the sale of beer: Be it therefore enacted, that from and after the tenth day of October, one thousand eight hundred and thirty, it shall be lawful for any person desirous of selling cider and perry by retail to apply to the proper authorities and to obtain an excise license for that purpose, under the same regulations in all respects (except as hereinafter is otherwise provided) as are in this Act prescribed and contained with respect to persons desirous of selling beer, ale, and porter by retail, and of being licensed for that purpose; and that all the clauses, regulations, and provisions in this Act contained relating to the sale of beer by retail, and to the licenses for selling the same, and to the sureties for the parties licensed, and to the conduct of the parties licensed, and to all other matters whatever respecting

(a) See notes to 9 Geo. 4, c. 61, ss. 1, 8.

(b) See note to 9 Geo. 4, c. 61, s. 30.

(c) See 9 Geo. 4, c. 61, s. 36, which is identical; see also Licensing Act, 1872, section 72.

See *R. v. Archdall*, 8 A. & E. 281; *Huzham v Wheeler*, 3 H. & C. 75. As to fairs and races, see Licensing Act, 1874, section 18; also 25 & 26 Vict. c. 22, s. 12; 26 & 27 Vict. c. 33, s. 21; 27 & 28 Vict. c. 18, s. 5.

selling of beer by retail, and the retailers thereof, and the uses for the same, and the houses where the same are sold, the penalties against the parties licensed, shall be taken and need to be applicable to the sale of cider and perry by retail, to licences for the same, and to the sellers of cider and perry retail, as if cider and perry, and the retailers thereof, were really mentioned and specified in and throughout this Act: Provided always, that the person receiving a license for selling beer or perry by retail shall pay for such license a duty of one pound one shilling, and no more, instead of the duty of two pounds two shillings hereinbefore mentioned, and which said duty of one pound one shilling shall be applied in like manner to the said duty of two pounds two shillings is hereinbefore enacted to be applied; and every such license shall be according to the form in the schedule annexed to this Act: Provided also, that any person licensed under this Act to sell beer by retail may also sell cider and perry by retail without receiving a separate license for that purpose; but that no person licensed to sell cider and perry by retail, and paying for such license, as herein provided, the sum of one pound and one shilling, shall be at liberty to sell beer by retail.^(d)

Appendx.
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[1. *Covenants against houses, &c., being used as public-houses to extend to persons licensed under this Act.*] Provided always, and be it enacted, that any and every covenant or condition of restriction contained in any lease or contract between a landlord and tenant, whereby the trade or business of a public-house or publican is prohibited from being carried on in any such house, building, or place mentioned or comprised in such lease or contract, or whereby any such house, building, or place is prohibited from being used as a public-house, or alehouse, shall nevertheless extend, and shall be construed to apply and extend, to every person who shall be licensed to sell beer, ale, or porter, cider or perry, under the provisions of this Act, and to any such house specified and mentioned in the license granted to such persons.^(e)

^(d) This section is repealed so far as it incorporates any repealed enactment: Licensing Act, 1872. See Schedule and 3 & 4 Vict. c. 61, s. 1.

^(e) Various decisions have been given as to how far covenants of this description affect some of the new licenses; see *London and North Western Railway Company v. Garnett*, 39 L. J. Ch. 25; L. R. 9 Eq. 26; W. R. 246; 21 L. T. 352; *Pease v. Coates*, 36 L. J. Ch. 57; L. R. 2 Eq. 1; 30 J. P. 819; 14 L. T. 886; *Fielden v. Slater*, L. R. 7 Eq. 523; L. J. Ch. 379; 20 L. T. 485; 17 W. R. 485; *Wilson v. Hart*, R. 1 Ch. 463; *Jones v. Bone*, L. R. 9 Eq. 674; 39 L. J. Ch. 405; L. T. 304; 18 W. R. 489; 34 J. P. 468.

Appndx. 32. *Rules for the interpretation of this Act.*] And in order to remove doubts as to the meaning of certain words in the Act, be it enacted, that the word "justice" shall be deemed to mean justice of the peace; and that the word "person" and the word "party" shall be deemed to include any number of persons and parties; and that the word "license," and the word "day," and the word "time," and the word "house," and the word "place," shall each be deemed to include any number of licenses, days, times, houses, or places; and that the word "beer" shall in all cases be deemed to include beer, ale, and porter; and that the word "cider" shall in all cases be deemed to include cider and perry; and that the word "county" and the words "county or place" shall be deemed severally to include any county, riding, division of the county of Lincoln, hundred, division of a county, liberty, division of a liberty, county of a city, county of a town, city, cinque port

As to a covenant not to use the next house as an eating house: *Kemp v. Bird*, 5 Ch. D. 974; 46 L. J. Ch. 828; 25 W. R. 800; 42 J. P. 36; not to keep a beerhouse within a certain distance: *Moufflet v. Cole*, L. R. 8 Ex. 32; 42 L. J. Ex. 8; 21 W. R. 176; *Thomas v. Hayward*, L. R. 4 Ex. 311; 38 L. J. Exch. 175. Covenant not to keep a beershop on the land is broken by an off-beer license: *Bishop of St. Albans v. Battersby*, 3 Q. B. D. 359; 47 L. J. Q. B. 87; 26 W. R. 678; 38 L. T. 685; 42 J. P. 581; *London and Suburban Company v. Field*, 16 Ch. D. 645; 58 L. J. Ch. 549; 44 L. T. 46. Covenant not to carry on public house is not broken by grocers getting off license: *Jones v. Bone*, L. R. 9 Eq. 674; 39 L. J. Ch. 405; 23 L. T. 304; 18 W. R. 489; covenant not to build any house except shop prevents a public house: *Hall v. Box*, 18 W. R. 820.

A covenant to deposit every underlease with the ground landlord's solicitor to be registered, was held to be not a usual covenant: *Brook v. Drysdale*, 3 C. P. D. 52; 37 L. T. 467; 26 W. R. 331. See *Railton v. Daniel*, 46 L. T. 684; 30 W. R. 801.

A covenant not to use as a public-house runs with the land: *Carter v. Williams*, L. R. 9 Ex. 678; 23 L. T. 183; 18 W. R. 595; 39 L. J. Ch. 560; *Nicoll v. Fenning*, 19 Ch. D. 258; 45 L. T. 738; 51 L. J. Ch. 166. A covenant to take beer from brewer means marketable beer, and binds assigns having notice: *Luker v. Dennis*, 7 Ch. D. 227; 37 L. T. (N.S.) 827; 47 L. J. Ch. 174; 26 W. R. 167; *Holt v. Collings*, 16 Ch. D. 718; 44 L. T. 214; 45 J. P. 456. And a yearly tenant may be bound without express notice: *Wilson v. Hart*, L. R. 1 Ch. 463; 35 L. J. Ch. 569; 14 L. T. 499; 14 W. R. 748; 29 J. P. 681; *Thornewall v. Johnson*, 50 L. J. Ch. 641; 44 L. T. 768; 29 W. R. 677; *Patman v. Harland*, 17 Ch. D. 353; 44 L. T. 728; 29 W. R. 707.

As to enforcing such covenants: *Richards v. Revett*, 7 Ch. D. 226; 44 L. J. Ch. 472; 26 W. R. 166; 37 L. T. 632; *Tait v. Gosling*, 11 Ch. D. 273; 48 L. J. Ch. 397; 40 L. T. 251; 27 W. R. 394.

As to brewer holding lease as security: *Dawn v. City of London Brewery*, L. R. 8 Eq. 155; *Menzies v. Lightfoot*, L. R. 11 Eq. 454.

corporate ; and the words "division or place" shall be to include any division of a county or riding, liberty, of a liberty, county of a city, county of a town, city, port, or town corporate ; and that the words "parish or hall be deemed to include any township, hamlet, tithing, extra-parochial place, or any place maintaining its own poor ; the word "penalty" shall be deemed to include any penalty, or forfeiture of a pecuniary nature ; and that the ; of the several words in this Act shall not be restricted, the same may be subsequently referred to in the singular or masculine gender only.

Appndx.
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4 & 5 WILL. 4, CAP. 85.

To amend an Act passed in the first year of His present Majesty, to permit the general Sale of Beer and Cider by retail in England.
[15th August, 1834.]

ill. 4, c. 64—Licenses to be granted for sale of beer, to authorise consumption thereof on the premises unless upon certificate.] Whereas much evil has arisen from the management and conduct of houses in which beer and cider is retail under the provisions of an Act passed in the first year of the reign of His present Majesty, intituled "An Act to permit the general Sale of Beer and Cider by retail in England," and it is expedient to amend the provisions of the said Act in certain particulars : Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled,

tenant not to do any act affecting the license is not broken by a conviction not recorded : *Wooler v. Knott*, 1 Exch. D. 265 ; *Ex. 884* ; 35 L. T. 121 ; 24 W. R. 1004 ; 40 J. P. 788 ; nor is it going to sea : *Moore v. Robinson*, 48 L. J. Q. B. 156 ; 40 W. R. 312. This covenant is not implied in a parole public-house : *Maw v. Hindmarsh*, 28 L. T. 644. If no license exists, tenant's covenant can only be to do his best to get the beer : *Shepherd v. Walker*, 34 L. T. 30. A covenant may be enforced by assignees of the reversion : *Fleet-Hull*, 23 Q. B. D. 35.

As to a covenant to take all the beer used from the brewer, see *Turbill*, 3 Camp. 286 ; *Stancliffe v. Clarke*, 7 Ex. 439 ; *Towrie*, L. R. 4 Ch. 654 ; 38 L. J. Ch. 665 ; 21 L. T. 188 ; 33 J. P. 659 ; *Edwick v. Hawkes*, 18 Ch. D. 199 ; 45 L. T. 168 ; *Hanbury v. Cundy*, 58 L. T. 155.

Appndx. and by the authority of the same, that from and after the commencement of this Act it shall be lawful for the commissioners of excise or other persons duly authorised, to grant licenses for the sale of beer, ale, porter, cider, or perry, under the provisions of the said recited Act, to any person applying for the same, that such license shall not authorise the person obtaining it to sell beer or cider to be drunk or consumed in the house or on premises specified in the same license, unless the same be granted upon the certificate hereinafter required.

2. Every person applying for a license to sell beer to be drunk on the premises to deposit with the commissioners of excise a certificate of good character, signed by six rated inhabitants of the parish, &c., and certified by one of the overseers. *Repealed by 32 & 33 Vict. c. 27, Schedule.*

3. Penalty on overseer refusing to certify as required. *Repealed by 32 & 33 Vict. c. 27, Schedule.(a)*

4. Permitting drinking beer in a neighbouring house or shed, &c., with intent to evade, &c. *Repealed by Licensing Act 1872. See Schedule.*

5. *To what persons provisions for billeting soldiers & Mutiny Act shall extend.] (b)*

(a) Under this section the overseer had a discretion as to certifying. *R. v. Kensington*, 12 Q. B. 654 ; 17 L. J. Q. B. 332 ; but see *Withyham*, 2 C. L. R. 1657.

(b) *Billeting soldiers.*] The law as to billeting soldiers on houses was finally settled by the Army Act, 1881, 44 & 45 Vict. c. 58, which is renewed from year to year. The constable is, by section 103, to make out an annual list of the victualling and other houses open to inspection, and subject to being amended on complaint to a court of summary jurisdiction. By section 103 the constable is to request, to give the billets, and the houses are described as follows:

104. *Liability to provide billets (1).*] The provisions of this Act with respect to victualling-houses shall extend to all hotels, livery stables, or alehouses, also to the houses or sellers of beer by retail, whether British or foreign, to be drunk in their own or places thereunto belonging, and to all houses of persons who sell brandy, spirits, strong waters, cider, or metheglin by retail; and the occupier of a victualling-house, inn, hotel, livery stable, alehouse, or such house as aforesaid, shall be subject to billets under this Act if such house is included under the expression "keeper of a victualling-house" in this Act.

Justices of the peace to regulate the times of opening and closing houses. *Repealed* by 3 & 4 Vict. c. 61, s. 14. **Appndx.**

and the inn, hotel, house, stables, and premises of such occupier in this Act included under the expression "victualling-house."

f) Provided that an officer or soldier shall not be billeted—

k.) In any private house; nor

l.) In any canteen held or occupied under the authority of a secretary of state; nor

m.) On persons who keep taverns only, being vintners of the city of London admitted to their freedom of the said company in right of patrimony or apprenticeship, notwithstanding the persons who keep such taverns have taken out licenses for the sale of any intoxicating liquor; nor

n.) In the house of any distiller kept for distilling brandy and strong waters, so as such distiller does not permit tipping in such house; nor

o.) In the house of any shopkeeper whose principal dealing is more in other goods and merchandise than in brandy and strong waters, so as such shopkeeper does not permit tipping in such house; nor

p.) In a house of a person licensed only to sell beer or cider not to be consumed on the premises; nor

q.) In the house or residence of any foreign consul duly accredited as such.

Sections 105—108 deal further with obligations and remedies of victuallers as to billeting.

10. *Offences by keepers of victualling-houses.*] If a keeper of a victualling-house commits any of the offences following; that is to

1) Refuses or neglects to receive any officer, soldier, or horse billeted upon him in pursuance of this Act, or to furnish such accommodation as is required by this Act; or

2) Gives or agrees to give any money or reward to a constable to excuse or relieve him from being entered in a list as liable, or from his liability to billets, or any part of such liability; or

3) Gives or agrees to give any officer or soldier billeted upon him in pursuance of this Act any money or reward in lieu of receiving an officer, soldier, or horse, or furnishing the said accommodation;

shall, on summary conviction, be liable to a fine of not less than 7 shillings and not exceeding five pounds.

The same Act of 1881 and a later Act define the extent of accommodation to be furnished by the keepers of licensed houses, and the rate of payment, and the mode of its recovery.

Appndx. 7. Empowering constables, &c., to visit licensed houses. *Repealed* by Licensing Act, 1872. See Schedule.

8. Penalty for making or using false certificates. *Repealed* 32 & 33 Vict. c. 27, Schedule.

9. No license for beer to be drunk on the premises to granted without a certificate. *Repealed* by 32 & 33 Vict. c. Schedule.(a)

10. Retailers compellable to produce their licenses on requisition of two magistrates. *Repealed* by Licensing Act, 1872. See Schedule.

11. *The powers, provisions, and penalties of 1 Will. c. 64, to apply to persons licensed under this Act, and their sureties, &c.*] This is *repealed* so far as incorporating *repealed* enactments. Licensing Act, 1872. See Schedule.

12. *Recited Act to continue in force, except as here altered.*] And be it enacted, that all the provisions of the recited Act shall be deemed and taken to be in full force, and except where the same are altered by this Act; and that much of the said Act as relates to the interpretation of certain words therein mentioned shall be applied to the interpretation the same words where used in this Act.

13. *Duties on beer licenses under 1 Will. 4, c. 64, repealed, and new duties granted in lieu thereof.*] (b)

14. *Such duties to be under the management of commissioners of excise, and to be recovered and accounted under the provisions of recited Act.*]

15. *Not to affect duty on licenses to retail cider perry; but such licenses to state particulars.*] Provided always, and be it further enacted, that nothing herein contained shall affect, or be deemed or construed to affect, the amount

(a) Under this section no *certiorari* lay to quash a license granted without certificate: *R. v. Salford*, 18 Q. B. D. 687. Nor was license void merely for want of the certificate: *Thompson v. Hors* H. & N. 254; 28 L. J. M. C. 163; 23 J. P. 150.

(b) The duties on beer licenses are now set forth in 43 & 44 c. 20, s. 41, *post*.

payable according to the provisions of the said recited Act **Appndx.**
 licenses to retail cider and perry; but in every such license
 it be specified whether the same is granted for the sale of cider
 or perry by retail to be drunk or consumed not in or upon the
 house or premises where sold, or for the retail of cider and perry
 to be drunk and consumed in or upon the house and premises
 where sold.(c)

**16. Licenses under this Act not to authorise persons to
 take licenses for sale of wine.]** No license to be granted under
 the said recited Act and this Act for the sale of beer or cider shall
 authorise any person to take out or hold any license for the sale
 of wine, spirits, or sweets, or made wines, or mead, or metheglin,
 and if any person licensed under the said recited Act and this Act
 to sell beer or cider shall permit or suffer any wine or spirits,
 or sweets, or made wines, mead, or metheglin to be brought into his
 house or premises to be drunk or consumed there, or shall suffer
 any wine, spirits, sweets, mead, or metheglin to be drunk or con-
 sumed on his house or premises by any person whomsoever, such
 person shall, over and above any excise penalty or penalties to
 which he may be subject, forfeit 20*l.*, to be levied, mitigated, and
 applied in the same manner as other penalties (not being excise
 penalties) are by this Act to be recovered, levied, mitigated, and
 applied. [See 23 Vict. c. 27, s. 3; 24 & 25 Vict. c. 91, s. 10; 43 & 44
 Vict. c. 20, ss. 41, 42.]

**17. Penalty on unlicensed persons selling beer and cider
 by retail to be drunk off the premises, 10*l.*; to be drunk on
 the premises, 20*l.*]** And be it further enacted, that every person
 not being duly licensed to sell beer, cider, and perry, as the
 keeper of a common inn, alehouse, or victualling-house who shall
 sell any beer or cider or perry by retail, not to be drunk or con-
 sumed in or upon the house or premises where sold, without
 having an excise retail license in force authorising him so to do,
 shall forfeit 10*l.*; and every person not being duly licensed to
 sell beer, cider, and perry as the keeper of a common inn, ale-
 house, or victualling-house, who shall sell any beer, cider, or
 perry by retail, to be drunk or consumed in or upon the house or
 premises where sold, without having an excise retail license in
 force authorising him so to do, whether such person shall or shall
 not be licensed to sell beer to be drunk or consumed off the pre-
 mises where sold, shall forfeit 20*l.*; which said penalties shall

(c) The duties on cider licenses are set forth in 43 & 44 Vict. c. 20,
 41, *post*.

Appndx. be sued for and recovered, mitigated, and applied by the means and under the same provisions as any other penalty be sued for and recovered, mitigated, and applied under any or laws of excise. [See Licensing Act, 1872, section 3, notes.](a)

18. The board over the door to state "not to be drunk on premises," or "to be drunk on the premises." *Repealed* Licensing Act, 1872. See Schedule, and section 11.

19. *What is a retailing of beer, cider, or perry.*] whereas doubts are entertained as to what is a selling of beer or cider or perry by retail: Be it therefore enacted, that every of any beer, or of any cider or perry, in any less quantity four gallons and a half, shall be deemed and taken to be a sale by retail. [See Licensing Act, 1872, section 3, and notes.]

20. *Persons licensed to sell beer or cider under this Act liable to penalties for selling spirits or wine without license.*] And whereas doubts have been entertained whether persons licensed to sell beer or cider under the said Act of 1834, in the first year of His Majesty's reign, who shall sell spirits or wine, or sweets or made wines, or mead or metheglin, without license, are liable to the penalties imposed by the laws of excise for selling spirits or wine, or sweets or made wines, or mead or metheglin, without license: Be it therefore declared and enacted, that all persons licensed under the said recited Act to sell wine or spirits, or any sweets or made wines, or mead or metheglin, shall be liable to and shall incur the penalties imposed by the laws of excise for selling spirits or wine, or sweets or made wines, or mead or metheglin, without license. 23 Vict. c. 27, s. 3; 24 & 25 Vict. c. 91, s. 10; 43 & 44 Vict. ss. 41, 42.]

21. Certificate not to be required for houses in certain towns, if population exceed 5,000. *Impliedly repealed* by 31 Vict. c. 27.

22. Service of summons or order. *Repealed* by Licensing Act, 1872. See Schedule.

23. *Commencement of Act.*]

(a) It was held under a case stated on a conviction under this Act that costs of the appellant could be granted against the Crown. 20 & 21 Vict. c. 43, s. 4: *Moore v. Smith*, 1 E. & E. 597; 28 L. J. 126; 23 J. P. 133.

3 & 4 VICT. CAP. 61.

Appndx.

to amend the Acts relating to the general Sale of Beer and Cider by Retail in England.

[7th August, 1840.]

*4 & 1 Will. 4, c. 64—4 & 5 Will. 4, c. 85—
retail beer not to be granted to any but the real
occupier, nor in respect of any house rated at less
than 10s. per annum, within the Bills of Mortality, or in
places, &c., containing 10,000 inhabitants; nor less
than 20s. per annum in places exceeding 2,500 inhabitants;
nor less than 10s. per annum in places situated elsewhere.]*

Act was passed in the first year of the reign of His
late King William the Fourth, intituled "An Act to
regulate the general Sale of Beer and Cider by retail in England:"
And another Act was passed in the fourth and fifth years
of His said late Majesty, intituled "An Act to amend
and alter the Acts passed in the first year of His present Majesty, to permit
the general Sale of Beer and Cider by retail in England:" And
it was expedient to alter and amend the said Acts: Be it
enacted by the Queen's most excellent Majesty, by and
with the advice and consent of the Lords spiritual and temporal,
in this present Parliament assembled, and by the
virtue of the same, that no license to sell beer or cider by
retail in the said recited Acts or this Act shall be granted to
any person who shall not be the real resident holder and occupier
of the dwelling-house in which he shall apply to be licensed, nor
shall any license be granted in respect of any dwelling-house
not, with the premises occupied therewith, be rated
to the rate for the relief of the poor of the parish,
or place in which such house and premises are situate
of an annual value of fifteen pounds per annum at the least
in the cities of London or Westminster, or within any
place within the Bills of Mortality, or within any city,
town, corporate, parish, or place, the population of
according to the last parliamentary census, shall exceed
10,000, or within one mile, to be measured by the nearest
street or path, from any polling place used at the last
general election in any town having the like population, and returning
members of Parliament; nor shall any such license
be granted in respect of any dwelling-house which shall not, with
the premises occupied therewith, be rated in one sum to the rate
for the relief of the poor of the parish, township, or place in which

Appndx. such house and premises are situated on a rent or annual value of eleven pounds per annum, if situated within any city, port, town corporate, parish, or place, the population of which according to such last parliamentary census shall exceed ten thousand five hundred and shall not exceed ten thousand within one mile, to be measured as aforesaid, from any place used at the last election for any town having the qualification as last aforesaid, and returning a member or members of Parliament; nor shall any such license be granted in respect of any dwelling-house which shall not, with the premises or premises therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house or premises are situated on a rent or annual value of eight pounds or less, if situated elsewhere than as aforesaid; and every license contrary hereto shall be null and void. (a)

(a) This section still governs the value qualifications of all houses for the sale of beer or cider, 1st, as to all houses for in-door consumption licensed before 1872; 2nd, as to all houses for out-door consumption, whether licensed before or after 1872 for the first time. 3rd, as to houses of arriving at the *annual value* is now defined by Licensing Act, sections 46, 47. Those houses which have been first licensed for consumption under this Act since 1872 are governed by the Licensing Act, 1872, section 45: see *ante*, p. 82.

The cases decided under this section show that when a parish or hamlet of the larger areas of a city, cinque port, town corporate, or place, the population of the city or town is the criterion; and where there was not in a city or town, though it contained several townships or hamlets, it was not the population of the particular township or hamlet, which was the criterion, but the population of the entire parish or place. *Charlesworth*, 20 L. J. M. C. 181; *Washington v. Scott*, 29 L. J. Q. B. 617; *Smith v. Redding*, 30 J. P. 518; L. R. 1 Q. B. 552; *Windsor v. Jeffrey*, 30 J. P. 552; 6 B. & S. 617; *Preston v. L. R. 5 Q. B. 391*; 35 J. P. 38; 39 L. J. M. C. 105; 22 L. R. 1104; *Rice v. Slee*, L. R. 7 C. P. 378; 36 J. P. 412; see 33 & 34 Vict. c. 111, *post*.

The annual value was held to be the rateable value: *Baker v. L. R. 19 J. P. 117*: but it is not so now. See Licensing Act, section 47, *ante*, p. 86.

The house must have been, before the Licensing Act, 1872, rated in one sum or at all to the relief of the poor. Thus, where it was situated in two parishes or townships and was rated in each, this was held not sufficient, though the aggregate rate was the sum mentioned in the statute: *Jennings v. Manchester L. T. 412*. Now it is enough that the occupant is a real resident and occupier, and that the house is of the required valuation.

A house partly used as a grocer's shop and partly as a beer-house was deemed qualified under this enactment: *Garretty v. Pott*.

Person applying to be licensed to produce a certificate of Appndx.
ing the *real resident* occupier of the house, and of the
t at which it is rated. *Repealed* by 32 & 33 Vict. c. 27,
de.(b)

Provision for new houses occupied since a rate was made.
d by 32 & 33 Vict. c. 27, Schedule.

n *extra-parochial* places licenses may be granted on the
te of two inhabitant householders of the required annual

Repealed by 32 & 33 Vict. c. 27, Schedule, so far as the
te was required from inhabitants, but unrepealed so far
iring a real rent or annual value of 15*l.*, 11*l.*, and 8*l.*
vely.

Penalty on overseers refusing to grant certificates, and on
s and other persons granting false certificates. *Repealed*
33 Vict. c. 27, Schedule.

6; 35 J. P. 168; 40 L. J. M. C. 1; 23 L. T. 554; 19
17.

railway arch used as a beerhouse was not qualified, because no
; in it, and it was not a dwelling-house: *R. v. Allmey*, 35

Qualification of residence on the premises does not apply to the
under 23 Vict. c. 27, s. 3; 24 & 25 Vict. c. 21, s. 3; 26 & 27
33, s. 1, to sell wine and spirits for consumption off the
; *R. v. Glamorganshire*, 1 Q. B. D. 55; 40 J. P. 150; 33
3; 24 W. R. 343; 45 L. J. M. C. 57.

licensing Act, 1872, sections 45, 46, 47, as to future qualifica-
t-door licensed houses.

Under this section an excise license granted without the over-
tificate was held not to be void, though it would have been if
m were not the real resident holder: *Thompson v. Harvey*,
[. 254; 28 L. J. M. C. 163; 23 J. P. 150. The overseer could
mpelled to certify the applicant to be the real resident occu-
v. *Kensington*, 12 Q. B. 654; 12 J. P. 743; *R. v. Langridge*,
Q. B. 73. But he could be ordered by *mandamus* to inquire
mine: *Ex parte Piddlesden*, 18 J. P. 391. And yet a *certio-
uash* the excise license would not be granted: *Ex parte Salford*,
649.

fence of using a false certificate could only be punished by the
f the place where the offence was committed: *R. v. Waghorn*,
. 647; 22 L. J. M. C. 60. An overseer was held not guilty of
a false certificate of character because he knew the beer seller
ing in concubinage: *Leader v. Yell*, 28 J. P. 470; *R. v.*
6 C. B. (N.S.) 584; nor because the amount of rate was antici-
l not actually assessed: *Dixon v. Steele*, 31 J. P. 564.

Appndx.

6. Penalty on forging certificates, or using false certificates.
Repealed by 32 & 33 Vict. c. 27, Schedule.

7. *Licenses to be void on conviction of felony [selling spirits without license.]* Every person who shall after be lawfully convicted of felony, or of selling spirits without license, shall for ever thereafter be disqualified from selling beer and cider by retail, and no license to sell beer and cider by retail under the said recited Acts or this Act shall be granted to any person who shall be so convicted as aforesaid; and if any person shall, after having been so convicted as aforesaid, take or have any license to sell beer or cider by retail under the said recited Acts or this Act, the same shall be void to all intents and purposes, and every person who shall, after being convicted as aforesaid, sell any beer or cider by retail, in any manner whatsoever, shall incur the penalty for so doing without license, and in all such cases in the prosecution for the recovery of such license a certificate from the clerk of the peace, or person acting in the stead of any such conviction as aforesaid, shall on the trial in such prosecution be legal evidence thereof.(a)

8. *On the death of a licensed person the executors, administrators, or the widow or child, may be authorised to sell for the remainder of the term of license.]* Upon the death of any person whatever licensed to sell beer or cider by retail under the said recited Acts or this Act before the expiration of his license, it shall be lawful for the person authorised to execute the said licenses to authorise and empower, by endorsement or otherwise as the commissioners of excise shall direct, the executors, administrators, or the widow or child of such deceased person who shall be possessed of and occupy the dwelling-house or premises before used for such purpose, to continue to retail beer and cider in the same house and premises during the remainder of the term for which such license was originally granted, without taking out any fresh license, or payment of any additional duty thereon; and also at the expiration of such license (in the residue of the said term shall be less than three calendar months from the death of the person licensed) to grant a new license to such executors, administrators, or widow, on payment of the proper license duty [and entering into the usual bond].(b)

(a) See similar sections in 23 Vict. c. 27, s. 22; 33 & 34 Vict. c. 14, and notes thereto.

(b) The effect of this section, which relates to the excise license, is similar to 23 Vict. c. 27, s. 12, is stated in the notes to the latter section. See also Licensing Act, 1872, section 3.

The words *within brackets* were repealed by 41 & 42 Vict. c. 22, Schedule.

**9. Persons licensed to retail beer or cider to make entry Appndx.
~~the~~ the excise.—7 & 8 Geo. 4, c. 53—4 & 5 Will. 4, c. 51.]**

Every person whatever licensed to retail beer or cider under the
 a recited Act or this Act shall, in manner directed by 7 & 8
 a. 4, c. 53, and by 4 & 5 Will. 4, c. 51, make entry with the
 oom of excise, of every house, cellar, room, and place for
 ring, keeping, or retailing beer or cider on pain of forfeiting
 penalties imposed by the said last-mentioned Act for making
 of any unentered room or place; and all beer and cider found
 any such unentered house, cellar, room, or place shall be for-
 ed.

**10. Penalty on persons licensed to sell beer or cider having
 ie, spirits, or sweets in their entered premises. *Repealed* by
 ensing Act, 1872. See Schedule, and section 10.**

**11. Officers of excise empowered to enter the premises of
 used beer retailers.]** It shall be lawful for any officer of
 ee, at all times during the hours in which any house licensed
 the retail of beer or cider may be kept open, to enter into
 ry house, cellar, room, or place entered for the storing, keep-
 or retailing of beer or cider, and to make, search for, and seize
 wine and spirits and sweets which may be found in any such
 ee, cellar, room, or place, and to examine all beer or cider
 t therein.

**12. And also the houses of persons selling beer at the
 s of 1½d. or less the quart.]** It shall be lawful for any
 er of excise, during the hours which any house is kept open
 the sale of beer at the rate of one penny halfpenny or after a
 rate the quart, to enter into every such house, cellar, room, or
 se for the keeping or retailing such beer, and to make search
 and seize all wines, spirits, sweets, and all beer which by law
 y are not entitled to sell.

**13. Additional penalty on unlicensed persons selling beer or
 er. *Repealed* by Licensing Act, 1872. See Schedule.**

**14. 11 Geo. 4 & 1 Will. 4, c. 64, s. 14, and 4 & 5 Will. 4,
 15, s. 6, repealed. *Repealed* by 11 & 12 Vict. c. 49, s. 15.**

**15. Hours for opening and closing houses. *Repealed* by
 ensing Act, 1872. See Act, 1874, section 3.**

**16. Justices may mitigate penalties. *Repealed* by Licensing
 t, 1872. See Schedule, and section 67.**

Appendx. 17. No person to forfeit his license for a first offence; an license to be void unless so adjudged. *Repealed* by Licensing 1872. See Schedule.

18. *Licenses may be granted to persons licensed before the passing of the Act whilst they continue the occupiers of the same house, although it is below the qualification required by the Act.* Provided always, and be it enacted, that nothing in this Act contained shall prevent any person from obtaining, at the expiration of his existing license, a renewed license in respect of any house in which he shall at the time of the passing of this Act be licensed to retail beer or cider under the said recited Acts; either of them, notwithstanding such house may not be of the annual value by this Act prescribed, nor to obligate any person to produce any other certificate (where a certificate was required) for obtaining his license than the certificate required by the said recited Acts; but it shall be lawful for the Commissioners of excise duly authorised to grant licenses to renew and to grant licenses to such person (being in other respects qualified) on the production of such certificate as last aforesaid, so long as such person shall continue to be the resident and occupier of the same house, anything in this Act to the contrary notwithstanding.(a)

19. Penalties under this Act, where not otherwise directed, to be recovered under the provisions of the former Acts. *Repealed* by Licensing Act, 1872. See Schedule.

20. Recited acts to continue in force, except as hereby altered.—*Interpretation of words.*]

21. Powers, provisions, and penalties of 11 Geo. 4 & 1 c. 64, and 4 & 5 Will. 4, c. 85, to apply to persons licensed under this Act.](b)

22. Act not to affect the two universities.]

23. Act may be altered this session.]

(a) This section may now be deemed spent, unless the holder of a license in 1840 survive and have continued occupiers of the same house.

(b) Repealed so far as incorporating repealed enactments: 1872, Sched.

5 & 6 VICT. CAP. 44.

Appendx.

*T for the Transfer of Licenses and Regulation of Public-
houses.* [1st July, 1842.]

*Powering transfer of licenses by justices at petty
—9 Geo. 4, c. 61—Proviso as to the metropolitan
district.]* Whereas it is expedient that greater facilities
be given in the transfer of licenses of inns, alehouses, and
tavern-houses, and likewise that some regulations should
be made for restraining the sale of spirituous liquors on
boats or other vessels at anchor in the river Thames :
Therefore enacted by the Queen's most excellent Majesty,
with the advice and consent of the Lords spiritual and
temporal, and Commons, in this present Parliament assembled,
by the authority of the same, that from and after the passing
of this Act, at any petty session of justices of the peace holden in
any division of every county and riding, and in any hundred
county not being within such division, and in every liberty,
town, or place within which any inn, alehouse, or victualling-
house shall be situated, and for which the said justices shall be
met at any time when no special session shall be holden for
such division, hundred, liberty, city, town, or place, it shall
be lawful, in those cases where justices of the peace assembled at a
session are empowered, by 9 Geo. 4, c. 61, to transfer or
renew licenses, before the expiration thereof, to sell excisable
liquors by retail in the same house or premises in respect of which
the person had been theretofore duly licensed, for the majority
of the justices then present, upon application made to them at
such petty session, by indorsement under their hands and
seals, any license which shall have been granted pursuant to
provisions of the said Act at any general licensing meeting, or
adjournment thereof, to authorise (if they shall deem it
proper to do, after examining upon oath all necessary parties),
person not disqualified by the said Act, to whom it shall be
lawful at the time of such application to transfer or grant
such license, to use, exercise, and carry on the business of a
victualler at the same house and on the same premises,
and to sell such excisable liquors as might theretofore have
lawfully sold and retailed therein ; and thereupon it shall
be lawful for the officer of excise empowered to transfer licenses
to indorsement on the excise licenses required to be transferred
the like authority to the persons so authorised by the
said Act or justices ; and the authority so granted shall continue
in force until the then next ensuing special session which

Appndx. — shall be holden for the division, hundred, liberty, city, or place within which such house and premises shall be sit and no longer ; at which special session the justices the there assembled, upon application made to them pursuant said Act, touching any transfer or grant of license to the parties to whom such authority shall have been so given sessions as aforesaid, shall hear and dispose of such application according to the provisions of the said Act : provided that nothing herein contained shall be construed to empower justices at petty sessions to give any such authority as within any of the divisions assigned or to be assigned of the police courts already established or to be established the metropolitan police district, except in the borough of wark ; but that any such application as is hereinbefore to be made at petty sessions shall, when the house and in respect whereof any license shall have been obtained the said Act shall be situated within any of the said police divisions, and not in the borough of Southwark, be made of the police magistrates sitting at any of the said courts such magistrate shall in his discretion grant such authority in the manner and for the time hereinafter mentioned : and also, that any person or persons who shall be authorised the provisions of this Act, to continue to carry on the business of a licensed victualler, shall, after the obtaining such authority and so long as the same shall continue in force, be subject to the powers, regulations, proceedings, penalties, and provisions declared by or contained in any Act or Acts in force at the regulation, government, or control of licensed keepers of alehouses, and victualling-houses, in like manner as if the same had been repealed and re-enacted, and that all penalties and forfeitures imposed by any such Act or Acts shall be applied directed by the same respectively.(a)

2. *When licenses are lost a copy may be indorsed and considered valid.*] Whenever it shall be proved to the satisfaction of any such magistrate or justices at petty session, upon application made as aforesaid, that any license granted pursuant to the said Act passed in the ninth year of the reign of George the Fourth has been lost or mislaid [or if the application is for the grant or transfer of a license, has been wilfully withdrawn by the holder thereof], it shall and may be lawful for any magistrate or justice to receive a copy of such license, and

(a) This section seems not to cover all the cases provided for in 9 Geo. 4, c. 61, s. 14. As to selling without a license, see L. Act, 1872, section 3.

copy under the hand of the clerk to the licensing Appndx.
whom the said license shall have been granted, and
and indorsement thereon as he or they might make
provisions of this Act upon the original license ; and
ment upon the copy so certified shall be as valid and
if the same had been made upon the said license.(b)

for indorsing the copy.] For every such certified
every such indorsement a fee of two shillings and six-
pence more, shall and may be demanded and taken.

qualified justices not to act at petty sessions.]
if the peace shall act upon any application which shall
at petty sessions as aforesaid who now is or shall be
by law from acting in or being present at any general
meeting, or any adjournment thereof, or at any
on for granting or transferring licenses to sell excisable
and every justice who, being so disqualified, shall wilfully
omit this provision, shall be liable to the same penalty
for the recovery thereof as are specified and
the said Act of the ninth year of the reign of King
Fourth.(c)

*ine, &c., to be sold on board any boats or vessels
lying at anchor during the time when prohibited
in public-houses.]* And be it enacted, that no wines,
other excisable liquors shall be sold by retail on board
, steamboat, or other vessel which shall be moored or
anchored within the metropolitan police district during the
times on Sundays, Good Friday, and Christmas Day on
which victuallers are by law obliged to keep their houses
open, any master, steward, mistress, or stewardess, or any

has been extended to other cases by Licensing Act, 1872,
and 47 & 48 Vict. c. 29, so as to include the words within
Nevertheless, the court has held that where an out-going
licensee withheld his license owing to a quarrel with his land-
lord, he was not bound to accept a copy : *Ex parte Phillips*,
11 Q.B. 369. At the same time they may exercise their jurisdiction
in refusing the current license, a copy of which can be obtained
under the Licensing Act, 1872, sections 36, 58.

Licensing Act, 1872, section 60, and 9 Geo. 4, c. 61, s. 6.
The provision referred to in this section is that in 9 Geo. 4, c. 61,
s. 6, though repealed, has been here incorporated and still
remains in force.

Appndx. other person on board any such boat, steamboat, or other vessel who shall, during those hours on Sundays, Good Friday, and Christmas Day, in which the houses of licensed victuallers shall be closed, sell any wines, spirits, or other excisable liquors, in or on board such boat, steamboat, or other vessel, within the district, shall be liable to a penalty not exceeding five pounds which may be recovered before any magistrate of the metropolitan police courts, or if the offence shall be committed beyond the limits of any metropolitan police court, established or to be established, before any two justices of the peace having jurisdiction therein, or shall, in the discretion of the magistrate or justices of the peace before whom the conviction shall take place, be imprisoned for any time not longer than one calendar month in any gaol or house of correction within the jurisdiction; and in every case of the adjudication of a pecuniary penalty and non-payment thereof, it shall be lawful for such magistrate or justices of the peace to commit the offender to such gaol or house of correction for a term not exceeding one calendar month, the imprisonment to cease on payment of the sum due; and such penalty shall be paid to the receiver of the metropolitan police, and be applied by him towards the expenses of the police courts established within the district. (a)

6. Act not to extend to Universities of Oxford and Cambridge.

23 VICT. CAP. 27.

An Act for granting to Her Majesty certain Duties on Wine Licenses and Refreshment Houses, and for regulating the licensing of Refreshment Houses and the grant of Wine Licenses. [14th June, 1860.]

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray

(a) The Licensing Act, 1872, does not affect the sale of intoxicating liquor in packet boats: section 72. This subject is also governed by Geo. 4, c. 47; 4 & 5 Will. 4 c. 75, s. 10; 43 & 44 Vict. c. 20, s. 1 post. See *ante*, p. 123.

your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto your Majesty the several rates and duties hereinafter mentioned; and do therefore most humbly beseech your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Appendix.

1. *From and after 1st July, 1860, certain duties to be charged for licenses herein mentioned.*(b)

2. *Powers and provisions of Excise Acts to apply to the duties granted by this Act.*] The duties by this Act granted shall be deemed to be excise duties, and shall be under the care and management of the Commissioners of Inland Revenue for the time being; and all powers, provisions, and regulations, penalties, and forfeitures contained in or enacted by any Act in force in relation to excise duties, shall, in all cases not herein expressly provided for, and so far as the same are not superseded, and are consistent with the express provisions of this Act, be fully observed, applied, and put in execution, for ascertaining the rent or value of any house or premises in respect of which any license shall be applied for under this Act, and for charging, collecting, and securing the said duties hereby granted, and otherwise relating thereto, as fully and effectually as if the same powers, provisions, and regulations, penalties, and forfeitures, were repeated and re-enacted in the body of this Act with reference to such rent or value and to the said duties hereby granted.

3. *Every person keeping a shop entitled to take out a license to retail wine not to be consumed on the premises.*] Every person who shall keep a shop for the sale of any goods or commodities other than foreign wine, or who shall have taken out a license as a dealer in wine (except persons expressly disqualified by this Act), shall without producing or having any other license or authority, be entitled to take out a license under this Act to sell by retail, and in reputed quart or pint bottles only, in such shop, foreign wine not to be consumed on the

(b) Certain duties were by this section declared on refreshment-houses and on refreshment-houses having a wine license. These duties were altered by 24 & 25 Vict. c. 91, ss. 8—11; 39 & 40 Vict. c. 16, s. 4; and 43 & 44 Vict. c. 20, ss. 41, 42. See 24 & 25 Vict. c. 91, s. 9, *post*.

Appndx. premises where sold, anything in any former Act to the contrary notwithstanding.(a)

4. *What shall be deemed selling by retail.*] Every sale of foreign wine in any less quantity than two gallons, or in less than one dozen reputed quart bottles, at one time, shall be deemed to be selling by retail. [See Licensing Act, 1872, sections 3, 74.]

5. Permitting drinking wine in a neighbouring house, shop, &c., with intent to evade the provisions of this Act, to be deemed drinking on the premises. Penalty. [*Repealed by Licensing Act, 1872. See Schedule, and section 6 of that Act.*]

6. *Persons keeping houses, &c., herein named required to take out licenses.*] All houses, rooms, shops, or buildings, kept

(a) The Wine and Beerhouse Act, 1869, 32 & 33 Vict. c. 27, s. 6, *post*, afterwards made it compulsory before holding this license to apply for a justices' license or certificate; but the justices could not and cannot now refuse the off-wine license except on four grounds: 33 & 34 Vict. c. 27, s. 8, *post*. Those who hold a wine dealer's license are exempt from the necessity of getting any justices' off certificate as regards the sale of foreign wine: Licensing Act, 1872, section 74. Thus, a grocer who holds a wine dealer's license does not require a justices' license if he has the excise retail license: *Palmer v. Thatcher*, 3 Q. B. D. 346; 42 J. P. 213; 47 L. J. M. C. 54; 37 L. T. 784; 28 W. R. 314.

Residence on the premises is not a necessary condition for a justices' certificate when such is required: *R. v. Glamorganshire*, *R. v. Rutzen*, 1 Q. B. D. 55; 40 J. P. 150; 45 L. J. M. C. 57; 33 L. T. 726; 24 W. R. 343; nor is the rateable value of the premises material: *R. v. Monmouthshire*, 38 J. P. 807.

The license can only be given to those who keep a shop for other goods than foreign wine. Where the applicant kept a shop only for selling casks of beer of four-and-a-half gallons, this was held to satisfy the description: *R. v. Bishop*, 50 J. P. 167. Where wine was sold as "Best Sherry, British," this was held to be foreign wine requiring a license: *Richards v. Banks*, 58 L. T. 634; 52 J. P. 23.

A license to sell foreign wine by wholesale or by retail now includes authority to sell sweets, or made wines, or mead, or metheglin in any quantity: 38 & 39 Vict. c. 23, s. 9.

When a wine dealer has branch offices in other towns in which he has an agent to receive orders which are sent to the head office and executed there, a license must be taken at each branch office also: *Stallard v. Marks*, 3 Q. B. D. 412; 42 J. P. 359; 47 L. J. M. C. 91; 38 L. T. 566; 26 W. R. 694. But where the agent has his own office and takes orders there, the dealer need not take a license there: *Sturgherry v. Spencer*, 51 J. P. 181; 55 L. J. M. C. 141.

open for public refreshment, resort, and entertainment at any time between the hours of [ten]^(b) of the clock at night and five of the clock of the following morning, not being licensed for the sale of beer, cider, wine, or spirits respectively, shall be deemed refreshment houses^(c) within this Act, and the resident owner, tenant, or occupier thereof shall be required to take out a license under this Act to keep a refreshment house; and every person who shall keep any house, room, shop, or building, for the purpose of selling therein any victual or refreshment to be consumed on the premises where the same shall be sold (except beer, cider, wine, and spirits sold respectively under a proper license in that behalf), and every person who shall keep any house, room, shop, or building for the consumption therein by the public of any refreshment (except as aforesaid), although the same shall not be sold therein, may, if he shall think fit, take out a license under this Act to keep a refreshment house; and in all proceedings and upon all occasions whatever it shall be sufficient to describe by the term refreshment house any house, room, shop, or building in which any such article as aforesaid (except as aforesaid) is sold to

(b) The word *ten* was substituted for *nine* by 24 & 25 Vict. c. 91, s. 1, *post*.

(c) *What is a refreshment house.*] Where a shop provides lemonade and ginger beer, having no accommodation for visitors to sit down, and nothing but a table or counter at which they stand only for a few minutes, this is deemed a refreshment house within the meaning of this section: *Houes v. Inland Revenue*, 1 Exch. D. 385; 46 L. J. M. C. 15; 4 J. P. 423; 35 L. T. 584; 24 W. R. 897. And the same if coffee and cigars were only provided: *Muir v. Keay*, L. R. 10 Q. B. 599; 44 L. J. M. C. 143; 23 W. R. 700; 40 J. P. 694; 41 J. P. 423. If the refreshments are not kept in the house to be supplied to visitors, but are only sent for at request of and for behoof of the visitors as required, it seems not a keeping open of the house: per BRAMWELL, B.; *aylor v. Oram*, 1 H. & C. 370; 31 L. J. M. C. 252; 27 J. P. 8; 7 T. 58; 10 W. R. 800. If the house is a temperance hotel not selling intoxicating liquors, but supplying ordinary refreshments, it is nevertheless a refreshment house: *Kelleway v. Macdougall*, 45 P. 207.

As to the words "public resort and entertainment," see notes to Act, 1872, s. 9, *ante*, p. 18, and to Act, 1874, s. 3, *ante*, p. 152.

Persons who hold licenses for refreshment houses are subject to the Sunday Act, or at least not more exempt than other shopkeepers: *Jeff v. Curtis*, 35 L. T. (N.S.) 853.

As to the duty on refreshment houses, see 24 & 25 Vict. c. 91, s. 10.

As to occasional licenses to refreshment houses, see 27 & 28 Vict. c. 18, s. 5, *post*.

Appndx. be consumed, or is consumed as aforesaid, without further or otherwise designating or describing the same. (a)

7. Confectioners and eating-house keepers entitled to take out licenses to sell wine to be drunk on the premises.] Every person who shall be licensed to keep a refreshment house and shall pursue therein the trade or business of a confectioner or shall keep open such house as an eating-house, for the purpose of selling, to be consumed therein, animal food or other victuals wherewith wine or other fermented liquors are usually drunk, shall be entitled (subject to the terms and conditions of this Act, and not being expressly disqualified thereby), to take out a license to sell foreign wine by retail in such refreshment house, to be consumed on the premises where the same shall have been sold, without producing or having any other license or authority than as aforesaid; and every confectioner and eating-house keeper respectively, who shall have taken out such license to retail wine under this Act, shall not be subject or liable to any penalty or forfeiture under any other Act or Acts by reason or on account of his selling wine by retail, or having the same in his possession in his entered premises, anything in any other Act or Acts to the contrary notwithstanding. (b)

8. Wine licenses not to be granted for refreshment houses under a certain rent or annual value—Persons disqualified to hold wine licenses.] Provided always, that no license to sell foreign wine by retail to be consumed on the premises shall be granted for any refreshment house which, with the premises belonging thereto and occupied therewith, shall be under the rent and value of ten pounds a year, nor for any refreshment house situated in any city, borough, town, or place containing a population exceeding ten thousand according to the last parliamentary

(a) The 24 & 25 Vict. c. 91, s. 8, *post*, altered the hour of closing as above.

(b) This wine license includes sweets and made wines: 26 & 27 Vict. c. 33, s. 18; 38 & 39 Vict. c. 23, s. 9. See also note to section 3, *ante*, p. 242.

A refreshment house keeper who supplied travellers with bread and cheese was held to keep an eating house, and entitled to the wine license: *Nunn v. Southall*, 26 J. P. 775; 7 L. T. 356.

A confectioner who supplied luncheons was held to keep a victualling house, and entitled to the public-house license under 9 Geo. 4, c. 6, s. 1: *R. v. Surrey JJ.*, 52 J. P. 423.

As to persons licensed to retail beer taking out wine licenses, see 24 & 25 Vict. c. 91, s. 10, *post*.

na, if such refreshment house, with the premises belonging hereto and occupied therewith, shall be under the rent and value of twenty pounds a year; and no sheriff's officer, or officer executing the legal process of any court of justice, shall be capable of receiving or using any license under this Act to sell wine by retail to be consumed on the premises; and every license which shall be granted contrary hereto shall be void to all intents and purposes.(c)

Appendx.

Penalty for keeping a refreshment house without license, 201.] Every person who shall keep a refreshment house in which a license is required by this Act, without taking out or having in force a proper license in that behalf granted to him under the authority of this Act, shall forfeit a sum not exceeding twenty pounds, which penalty shall be recovered as hereinafter provided.(d)

D. By whom licenses under this Act shall be granted. Terms of licenses as in schedule to this Act.] All licenses authorised to be granted under this Act shall be granted by and under the hands of the collector or other person having charge of the excise collection, and the supervisor of excise of the district in which respectively the refreshment house or other house or place for or relating to which any such license shall be required, or such other person or persons as the Commissioners of Inland Revenue shall appoint or authorise in that behalf, on payment of a duty chargeable for such licenses respectively; . . . Provided always, that it shall be lawful for the Commissioners of Inland Revenue from time to time to make such alterations therein as they may deem to be necessary, in consequence of any alteration or amendment of the law, in order to make such form of license conformable to the law for the time being.(e)

L. Licenses : date, expiration, and renewal thereof.] Licenses which shall be granted under the authority of this

) This valuation qualification (as to the mode of arriving at which the Licensing Act, 1872, section 47) is confined to in-door licenses. The valuation qualification was put on out-door wine licenses, nor is it any now.

) This is to be an excise penalty : 23 & 24 Vict. c. 113, s. 42. See also the Licensing Act, 1872, s. 3, *ante*, p. 7 : 27 & 28 Vict. c. 64, *post*.

) It was afterwards required by the Wine and Beerhouse Act, 1862, 25 & 26 Vict. c. 27, s. 4, *post*, that a justices' license should first be obtained. This section originally prescribed the form of license, but a part of the section was repealed by 38 & 39 Vict. c. 66, schedule, and the statutory form is now given in the Appendix to this volume.

Appndx.

6. Penalty on forging certificates, or using false certificates.
Repealed by 32 & 33 Vict. c. 27, Schedule.

7. *Licenses to be void on conviction of felony or of selling spirits without license.*] Every person who shall hereafter be lawfully convicted of felony, or of selling spirits without license, shall for ever thereafter be disqualified from selling beer and cider by retail, and no license to sell beer and cider by retail under the said recited Acts or this Act shall be granted to any person who shall be so convicted as aforesaid; and if any person shall, after having been so convicted as aforesaid, take or have any license to sell beer or cider by retail under the said recited Acts or this Act, the same shall be void to all intents and purposes, and every person who shall, after being convicted as aforesaid, sell any beer or cider by retail, in any manner whatsoever, shall incur the penalty for so doing without license, and in all such cases in the prosecution for the recovery of such penalty a certificate from the clerk of the peace, or person acting as such, of any such conviction as aforesaid, shall on the trial in such prosecution be legal evidence thereof.(a)

8. *On the death of a licensed person the executors or administrators, or the widow or child, may be authorised to sell for the remainder of the term of license.*] Upon the death of any person whatever licensed to sell beer or cider under the said recited Acts or this Act before the expiration of the license, it shall be lawful for the person authorised to grant licenses to authorise and empower, by endorsement or otherwise, as the commissioners of excise shall direct, the executors or administrators, or the widow or child of such deceased person who shall be possessed of and occupy the dwelling-house and premises before used for such purpose, to continue to retail beer and cider in the same house and premises during the residue of the term for which such license was originally granted, without taking out any fresh license, or payment of any additional duty thereon; and also at the expiration of such license (in case the residue of the said term shall be less than three calendar months from the death of the person licensed) to grant a new license to such executors, administrators, or widow, on payment of the proper license duty [and entering into the usual bond].(b)

(a) See similar sections in 23 Vict. c. 27, s. 22; 33 & 34 Vict. c. 21, s. 14, and notes thereto.

(b) The effect of this section, which relates to the excise license and is similar to 23 Vict. c. 27, s. 12, is stated in the notes to the latter section. See also Licensing Act, 1872, section 3.

The words *within brackets* were repealed by 41 & 42 Vict. c. 71, Schedule.

persons licensed to retail beer or cider to make entry **Appndx.**
excise.—7 & 8 Geo. 4, c. 53—4 & 5 Will. 4, c. 51.]

person whatever licensed to retail beer or cider under the said Act or this Act shall, in manner directed by 7 & 8 Geo. 4, c. 53, and by 4 & 5 Will. 4, c. 51, make entry with the officer of excise, of every house, cellar, room, and place for keeping, or retailing beer or cider on pain of forfeiting the penalties imposed by the said last-mentioned Act for making entry in an unentered room or place; and all beer and cider found in any unentered house, cellar, room, or place shall be for-

feiture on persons licensed to sell beer or cider having spirits, or sweets in their entered premises. *Repealed by Licensing Act, 1872.* See Schedule, and section 10.

Officers of excise empowered to enter the premises of beer retailers.] It shall be lawful for any officer of excise at all times during the hours in which any house licensed to retail of beer or cider may be kept open, to enter into any such house, cellar, room, or place entered for the storing, keeping, or retailing of beer or cider, and to make search for, and seize any spirits and sweets which may be found in any such house, cellar, room, or place, and to examine all beer or cider therein.

And also the houses of persons selling beer at the rate of half a pint or less the quart.] It shall be lawful for any officer of excise, during the hours which any house is kept open for the retail of beer at the rate of one penny halfpenny or after a half the quart, to enter into every such house, cellar, room, or place, and to make search for, and seize all wines, spirits, sweets, and all beer which by law is not entitled to sell.

Additional penalty on unlicensed persons selling beer or spirits. *Repealed by Licensing Act, 1872.* See Schedule.

Penalty on persons selling beer or spirits at a lower rate than the law. 1 Geo. 4 & 1 Will. 4, c. 64, s. 14, and 4 & 5 Will. 4, c. 51, s. 1, *repealed.* *Repealed by 11 & 12 Vict. c. 49, s. 15.*

Hours for opening and closing houses. *Repealed by Licensing Act, 1872.* See Act, 1874, section 3.

Justices may mitigate penalties. *Repealed by Licensing Act, 1872.* See Schedule, and section 67.

20. Additional penalty on unlicensed person sell
Repealed by Licensing Act, 1872. See Schedule.

21. *What shall be deemed foreign wine and w
be deemed spirits.]* All liquor which shall be sold or
sale by any person, whether licensed under this Act
being foreign wine, or under the name by which a
wine is usually designated or known, shall, as against
who shall so sell or offer the same for sale, be deemed
to be foreign wine; and any fermented liquor containin
proportion than forty per centum of proof spirit shall
and taken to be spirits.(b)

22. *License to be void on conviction of felony
spirits without license.]* Every person who shall be
of felony or of selling spirits without license shall for e
after be disqualified from selling wine by retail, and no
sell wine by retail under this Act shall be granted to a
who shall have been so convicted as aforesaid; and, if a
shall, after having been so convicted as aforesaid, take o
any license to sell wine by retail under this Act, the s
be void to all intents and purposes; and every person
after being convicted as aforesaid, sell any wine by ret
manner whatsoever, shall incur the penalty for so doin
license; and in all such cases, in the prosecution for th
of such penalty, a certificate from the clerk of assize or
of the peace, or person acting as such of any such con
aforesaid shall on the trial in such prosecution be lega

3. Licensed retailers of wine to make entry of houses, Appndx.

with the excise.] Every person licensed to retail wine under this Act shall, in manner directed by the laws of excise in his behalf, make entry with the proper officer of excise of every house, cellar, room, and place for storing, keeping, or retailing of wine, on pain of forfeiting the penalties imposed by the statutes in that behalf for making use of any unentered room or place; and all wine found in any such unentered house, cellar, room or place shall be forfeited.

4. Excise officers empowered to enter the premises of licensed retailers of wine.] It shall be lawful for any officer of excise, during the hours in which any house licensed for the retail of wine to be consumed on the premises may be kept open, to enter into every house, cellar, room, or place entered for the storing, keeping, or retailing of wine to be consumed as aforesaid, to make search for and seize all spirits which may be found in any such house, cellar, room, and place, and to examine all spirits kept therein.(d)

5. Penalty on persons licensed to retail wine having spirits in their entered premises.] If any person licensed to retail wine under this Act shall receive into, or keep, or have in possession, in any cellar, room, or place entered for storing, keeping, or retailing wine, any spirits, he shall, in addition to all other penalties, forfeit the sum of fifty pounds, which shall be deemed an excise penalty; and all spirits found in any such cellar, room, or place, shall be forfeited; and on conviction of any such licensed person in any penalty for having spirits in possession, or for selling or retailing spirits, the license of such person for retailing wine shall become null and void, and shall be so adjudged.

6. Standard measures to be used. Repealed by Licensing Act, 1872. See section 8.

7. Hours for opening and closing. Repealed by Licensing Act, 1872. See section 28, and Act, 1874, ss. 3, 9.

8. Houses closed in case of riot, &c. Repealed by Licensing Act, 1872. See Schedule, and section 23.

^d See power to constables to enter all licensed houses: Licensing Act, 1874, sections 16, 17.

Appndx. **29.** Penalty on permitting drunkenness. *Repealed by Li*
 Act, 1872. See Schedule, and section 13.

30. *Penalties recoverable before two justices.*] All
 ties under this Act, except those denominated excise p
 shall be recovered upon the information or complaint of
 stable or other peace officer before two justices acting i
 sessions, and shall be prosecuted and proceeded for withi
 calendar months next after the commission of the off
 respect of which such penalty shall be incurred, or with
 shorter time as may be herein limited with regard to a
 ticular penalty. [And penalties are specified for first,
 and third offence].(a)

31. *Justices may adjudge premises disqualified j*
of wine.](a)

32. *Penalties for offences in refreshment h*
 Every person licensed to keep a refreshment house un
 Act who shall (without a license for that purpose) sell o
 or suffer to be sold within such refreshment house any
 cating liquor, or shall knowingly suffer any unlawful g
 gaming therein, or knowingly suffer prostitutes, thi
 drunken and disorderly persons to assemble at or continu
 upon his premises, or do, suffer, or permit any act in co
 tion of his license, shall, upon conviction thereof before
 tices, pay for the first offence a fine not exceeding forty s
 for the second offence a fine not exceeding five pounds,
 every subsequent offence a fine not exceeding twenty po
 be subject to a forfeiture of his license, at the discretion
 justices before whom he shall be convicted; and in case
 forfeiture of his license, such person shall be disqualified
 space of one year then next ensuing from obtaining
 license; and such fresh license, if obtained within 1
 year, shall be absolutely null and void to all inter
 purposes.(a).

33. *Power to justices to mitigate penalties.*] It
 lawful for the justices before whom any person shall be c
 of any offence against this Act to mitigate, if they shall s
 any penalty incurred for such offence; provided that wh
 conviction shall take place on any information exhibite

(a) Repealed by Licensing Act, 1872, as to houses selling
 cating liquors.

of excise such penalty shall not be mitigated to any sum less than one-fourth part thereof.(b) **Appendx.**

Appeal to the sessions against a second or third offence.] Provided always, that it shall be lawful for the person convicted of any such second or third offence to appeal to the next assizes or quarter sessions of the peace.(c)

Court to adjudge costs of appeal in certain cases.] Where it shall happen that any appeal in pursuance of this Act shall be dismissed, or that the judgment appealed against shall be affirmed, or that such appeal shall be abandoned, it shall be lawful for the court to which such appeal shall have been made, and to which such appeal shall have been intended to have been made, and such court is hereby empowered to adjudge and order that the party so having appealed, who shall have entered into such recognizance, shall pay to the justices whose judgment such appeal shall have been made or intended to be made, or to whomsoever they shall appoint, such sum as shall in the opinion of such court be sufficient to indemnify such justices from all costs and charges incurred by them to which such justices may have been put in consequence of the intention or declared intention of such party to appeal, and if such party shall refuse or neglect to pay forthwith the same, it shall be lawful for the said court to adjudge and order that the party so refusing or neglecting shall be committed to the common gaol or house of correction, there to remain until such sum shall be paid, or for any time not exceeding six calendar months, and such sum be sooner paid; and in every case in which the judgment so appealed against shall be reversed, it shall be lawful for the court (if it shall think fit) to adjudge and order that the party so having appealed, or the party in and for which such justices whose judgment shall have been so reversed, shall have acted on appeal when they shall have given such judgment shall pay to the justices, or to whomsoever they shall appoint, such sum as shall in the opinion of such court be sufficient to indemnify such justices from all costs and charges whatsoever to which

appealed by Licensing Act, 1872, as to houses selling intoxicating liquors. See also Licensing Act, 1874, section 12, and notes, *ante*, p. 164. The appeal in such cases is now regulated by the Summary Jurisdiction Acts, 42 & 43 Vict. c. 49, and 47 & 48 Vict. c. 43, s. 101. And it is the same where the penalties are for excise: *R. v. Glamorganshire JJ.*, 22 Q. B. D. 628; 53 J. P. 294; *M. C.* 93.

Appndx. they may have been so put ; and the said treasurer is authorised to pay the same, which shall be allowed to his accounts.(a)

36. *Proceedings on appeal to be carried on by the constable, and the expenses of prosecution to be charged on the county rates.]* In every case in which any appeal shall be brought by any person convicted of any offence under the provisions of this Act to the general or quarter sessions, it shall be lawful for the convicting justices, if no other fit and proper person shall appear to prosecute such charge, and to carry on such prosecution as may be necessary to obtain at such session an adjournment thereon, to order that a constable of the city of London, or a constable of the metropolitan police force within the metropolitan police district, or if elsewhere, the superintendent or inspector of police of the district, or the constable or other peace officer of the parish or place in which the house kept by the person convicted shall be situate, as to the said justices shall seem fit, shall appear on all proceedings necessary to obtain such adjudication, and to bind any such constable, or the said superintendent or inspector of police, or other peace officer, in a sufficient recognizance so to do ; and it shall be lawful for the justices to whom such offender shall have been convicted, to order the treasurer of the county or place in and for which such justice shall then act to pay to such constable, superintendent, inspector, peace officer, and to the witnesses on his behalf, such sum of money as to the court shall appear to be sufficient to reimburse them respectively the expenses which they shall have been really put to in and about such prosecution, which order of the justices of the peace is hereby directed and required forthwith to be made out, and to deliver to such constable, superintendent, inspector, or other peace officer and witnesses respectively ; and the treasurer is hereby authorised and required, upon sight of such order, forthwith to pay to the person authorised to receive the same such money as aforesaid, and the said treasurer shall be allowed the same in his accounts.(b)

37. *Power to justices of the peace to summon witnesses.]* (c)

(a) Repealed by Licensing Act, 1872, as to houses selling and eating liquors. See notes, *ante*, p. 213.

(b) Repealed by Licensing Act, 1872, as to houses selling and eating liquors. See notes, *ante*, p. 215.

(c) Repealed by Licensing Act, 1872, as to houses selling and eating liquors. In other respects superseded by repeals in 32 & c. 27, Sched., and 46 & 47 Vict. c. 39, Sched., and by existing provisions in Summary Jurisdiction Acts.

Penalty on witnesses refusing to attend.] Any person named as a witness to give evidence before the said Lord Mayor or alderman, or any justices or sessions, touching any matter arising under this Act, either on the part of the defendant or of the person accused, or of any person interested in such matter, who shall neglect or refuse to appear at the time and place for that purpose appointed, and who shall not make a reasonable excuse for such neglect or refusal as shall be allowed and allowed by such Lord Mayor or alderman or justices or sessions, or who appearing shall refuse to be examined on oath or affirmation and give evidence, shall, on conviction, pay any sum not exceeding ten pounds for every such offence. (d)

Appendix.

Penalty for harbouring constables.] (e)

Penalty on drunkards guilty of riotous or indecent behaviour.] (f)

Penalty on drunken and disorderly persons refusing to quit.] Any person who shall be drunk, riotous, quarrelsome, or disorderly in any shop, house, premises, or place licensed for the sale of beer, wine, or spirituous liquors by retail to be consumed on the premises, or for refreshment, resort, and entertainment under the provisions of this Act, and shall refuse or neglect to quit such shop, house, premises, or place upon being requested to do so by the manager or occupier, or his agent or servant, or by any constable, shall, on conviction thereof before one justice, be liable to pay a fine not exceeding forty shillings; and all constables are hereby authorised, empowered, and required, on the demand of such manager, occupier, agent, or servant, to assist in removing such drunken, riotous, quarrelsome, and disorderly persons from such shops, houses, premises, and places. (g)

Provisions of 11 & 12 Vict. c. 43, to be applied in recovery of penalties under this Act.] And with regard to penalties incurred under this Act, except the penalties so denominated excise penalties, all the provisions contained in the Act 11 & 12 Vict. c. 43, relating to proceedings for the

See notes to last section.

Repealed by Licensing Act, 1872, and see section 16 of that

See last note, and Licensing Act, 1872, section 12.

Repealed by Licensing Act, 1872, as to houses selling intoxicating liquors.

Appndx. recovery of penalties by summary conviction, and to a against such convictions, and the levying and enforcing of ties, and the costs of such proceedings, shall be applied and force in relation to the penalties by this Act imposed.(a)

43. *How excise penalties under this Act are to be recovered, &c.]* The penalties imposed by this Act denom excise penalties shall be recovered, levied, mitigated, and a by the same ways, means, and methods, and in like man penalties may be recovered, levied, mitigated, and applied the laws of excise in that behalf.(b)

44. *Covenants against houses, &c., being used as p houses to extend to persons licensed to sell wine unde Act.]* Provided always, that any covenant or clause of rest contained in any lease or contract between a landlord and t whereby the trade or business of a vintner is prohibite being carried on in any house, building, or place mentio comprised in such lease or contract, or whereby any such building, or place is prohibited from being used as a public shall be construed to apply and extend to every person wh be licensed to sell wine to be consumed on the premises un provisions of this Act, and to any house specified in the ranted to such person.(c)

45. *Act not to affect the two Universities, or the V Company in London, or the borough of St. Alban's.](d)*

46. *Extent of Act.]* This Act shall not extend to Sc or Ireland.

Form of refreshment house license.](e)

(a) Repealed by Licensing Act, 1872, as to houses selling eating liquors, and see 42 & 43 Vict. c. 49, s. 53.

(b) The recovery of excise penalties also may now be rec under the Summary Jurisdiction Acts, 42 & 43 Vict. c. 49, s. 53

(c) See notes to 1 Will. 4, c. 64, s. 31, *ante*, p. 223, as to covenants.

(d) See a similar section in 9 Geo. 4, c. 61, s. 36, and Licensi 1872, section 72.

(e) The schedule to this Act contained a *form* of a refres house license. See the form now used in Appendix to this volu

24 & 25 VICT. CAP. 21.

*for granting to Her Majesty certain duties of
and Stamps.* [28th June, 1861.]

* * * *

*to licensed dealers in spirits taking out an
license to retail and send out foreign or British
less quantities than two gallons.]* Any person duly
a dealer in spirits in England may take out an addi-
se authorising him to sell by retail foreign or British
ny quantity not less than one reputed quart bottle, or,
a liqueurs, in the bottles in which the same may have
ted, not to be drunk or consumed upon the premises
the section repealed by 43 & 44 Vict. c. 24, Sched.).(f)

*uses may be granted for the sale of table beer by
to be drunk on the premises.]* It shall be lawful for
to take out a license for the sale in any house or shop
r, at a price not exceeding the rate of one penny half-
quart, and not to be drunk or consumed on the premises
and it shall not be necessary to the obtaining of such
; the said house or shop shall be rated to the relief of
any amount.(g)

schedule to the Act imposed a duty on this additional retail
s of 3l. 3s. Residence of the holder of the license on the
mises is not a necessary condition to this license: *R. v.*
; *R. v. Glamorganshire JJ.* 1 Q. B. D. 55; 45 L. J. M. C.
C. 726; 24 W. R. 343; 40 J. P. 150. The applicant must,
pplication, have taken out the dealer's license in respect of
; for which he seeks the additional license; but he need not
so before he gave the necessary notices previous to the
Hence, where at the general licensing meeting the appli-
for want of the dealer's license, but immediately gave fresh
l then took out the dealer's license before the adjournment
held entitled to the certificate: *Ex parte Maugham, R. v.*
J., 1 Q. B. D. 49; 45 L. J. M. C. 36; 40 J. P. 39; 33 L. T.
. R. 205.

ld, that a grocer who sells spirits under this licence does not
reach of the covenant in his lease against using the premises
-house, or for the retail of spirits: *Jones v. Bone*, 39
05; L. R. 9 Eq. 674. But see *ante*, p. 223, 1 Will. 4, c. 64,
otes.

est of this section is repealed by 32 & 33 Vict. c. 27, Schedule.

Apndx.

24 & 25 VICT. CAP. 91.

AN ACT to amend the Laws relating to the Inland Revenue
 [6th August, 1861.]

* * * * *

8. *Persons not compellable to take out refreshment house license for a house not kept open after ten o'clock at night.* For the amendment of two several Acts passed in the last session of Parliament, chapter twenty-seven and chapter one hundred and seven, be it enacted, that no person shall be compellable to take out a license under either of the said Acts to keep a refreshment house, whose house, room, shop, or building shall not be kept open for public refreshment, resort, and entertainment after the hours of ten of the clock at night; and the said Act shall be read and construed as if the word "ten" had been substituted for the word "nine" in the sixth section of the said Acts respectively.

9. *Lower rate of duty on refreshment house licenses for houses under 30l. annual value—Allowance of duty paid for refreshment house license to be made on taking out new license.]* And in lieu of the duties chargeable under the said last-mentioned Acts respectively for every license to keep a refreshment house there shall be charged the following duties that is to say,—

If the house and premises in respect of which such license shall be granted shall in England be under the rent and value of thirty pounds a year, and in Ireland be under the value of thirty pounds a year, the duty of ten shillings and sixpence :

And if the same shall be of the rent or value of thirty pounds a year or upwards, the duty of one pound and one shilling: And whenever any person who shall have taken out a license to keep a refreshment house, not being a house open after ten o'clock at night, shall apply for and obtain a license under either of the said Acts to sell therein by retail foreign wine to be consumed in

The justices have now an absolute discretion to refuse this license: 32 & 33 Vict. c. 27, s. 8; 45 & 46 Vict. c. 34.

The schedule to the Act imposed a duty of 5s. on this excise table-beer license.

(a) The word "ten" was substituted for "nine" in the section of 23 Vict. c. 27, s. 6, *ante*, p. 243.

ouse, he shall be allowed an abatement at the rate per **Appendx.**
 hereinafter mentioned from the duty chargeable for such
 mentioned license in respect of the same period of time or
 of the year for which he shall take out the said license to
 vine ; (that is to say),—

£ s. d.

re the house and premises in respect of which
 ch licenses shall be granted shall in England be
 der the rent and value, or in Ireland under the
 lue of thirty pounds a year, an abatement of - 0 7 4
 where the same shall be of the rent or value of
 irty pounds or upwards an abatement of(b) - - 0 17 10

ed always, that if any person to whom any such abatement
 esaid shall have been made on taking out a wine license
 keep open his house as a refreshment house, or shall sell
 any wine or other refreshment after the hour of ten of the
 it night, he shall be deemed to keep a refreshment house
 it taking out and having in force a proper license in that
 ; and also in respect of any wine sold by him after the
 foresaid, he shall be deemed to have sold the same without
 ; a proper license in force duly authorising him in that
 , and shall forfeit the penalties imposed for such offences
 tively, by the ninth and nineteenth sections of the said Act
 last session of Parliament, chapter twenty-seven.(c)

*Persons licensed to retail beer not precluded from
 out wine licenses.*] And whereas an Act was passed in the
 ssion of Parliament, chapter twenty-seven, for granting to
 Majesty certain duties on wine licences and refreshment
 , and doubts have arisen whether persons licensed to retail
 in England are precluded from taking out or having granted
 on a license for the sale of wine under the said Act : for the
 al of such doubts be it declared and enacted, that nothing
 said Act or in any other Act or Acts contained shall be
 ged, deemed, or construed to preclude or disqualify any
 from taking out or having granted to him any license for
 le of wine under the said Act of the last session of Parlia-
 by reason or on account of his being licensed for the sale of
 nder any Act or Acts in that behalf.(d)

The above abatement was repeated by 39 & 40 Vict. c. 16, s. 4.
 43 & 44 Vict. c. 20, *post*, as to the duty.

See Licensing Act, 1872, section 28, as to hour of closing, and
 s 45, 46, and 47 as to mode of estimating valuation.

And the same rule applies to the spirit dealer's retail licenses as
 e off-licenses, 35 & 36 Vict. c. 94, s. 69.

Appndx. 11. *Persons liable to retail wine not to be subject to penalty under the Beer Acts for having wine or sweets in possession.*] No person licensed for the sale of wine under the Act passed in the last session of Parliament, chapter twenty-seven, shall be subject or liable to any penalty or forfeiture under any Act relating to the retailing of beer by reason or account of his selling, dealing in, retailing, or receiving into, having in his possession, any wine, or sweets, or made wines, mead, or metheglin, anything in any such Act or Acts as is mentioned to the contrary notwithstanding.(a)

* * * * *

13. *Exemptions as to the sale of beer or spirits at fairs or races not repealed by 23 & 24 Vict. cc. 113, 114.]*(b)

14. *All licenses granted under the Acts relating to the retailing of beer to expire on the 10th October in each year* Whereas the licenses authorising the retailing of beer granted under the authority of three several Acts passed respectively in the first year of the reign of His late Majesty King William the Fourth, chapter sixty-four, in the fourth and fifth years of the same reign, chapter eighty-five, and in the third and fourth years of the reign of Her present Majesty, chapter sixty-one, as directed by the first of the said Acts to be dated on the day when the same shall be granted, and to expire at the end of twelve calendar months after the day on which such licenses shall be dated, and it is expedient that all such licenses should expire at one and the same period of the year: Be it enacted that every license taken out under the said recited Acts shall be in force from the day of the date of such license until the tenth day of October next following the granting thereof; and every person who shall take out a license under the said Acts for the first time

(a) The statute, 4 & 5 Will. 4, c. 85, s. 16, provided that those holding licenses to retail beer should not be authorised to hold retail licenses for wine, spirits, or sweets. This section has been said merely not to preclude a beerhouse keeper as such from obtaining a wine license, but that it does not of itself entitle him to it: *R. v. King or Manchester JJ.*, 20 Q. B. D. 430; 52 J. P. 164; 57 L. J. M. C. 20; 58 L. T. 667 36 W. R. 600.

(b) This section kept alive any existing exemptions as to selling at fairs and races, notwithstanding 23 & 24 Vict. cc. 113, 114. The Act 23 & 24 Vict. c. 114, was repealed by 43 & 44 Vict. c. 24. See now as to fairs and races, Licensing Act, 1874, section 19; also 25 & 26 Vict. c. 22, s. 13; 26 & 27 Vict. c. 33, ss. 19, 21; 27 & 28 Vict. c. 18, s. 1

be entitled to the same on payment of a proportionate part **Appndx.**
 the duty thereon in the same manner as a person commencing
 trade or business for which an excise license is required, may
 take out a license under the provisions contained in the
 nineteenth section of the Act passed in the sixth year of the
 reign of King George the Fourth, chapter eighty-one.(c)

25 & 26 VICT. CAP. 22.

*ACT to continue certain Duties of Customs and Inland
 Revenue for the service of Her Majesty, and to grant,
 alter, and repeal certain other Duties.*

[3rd June, 1862.]

* * * * *

12. *So much of any Act as permits sale of beer at fairs,
 without license repealed.]* So much of any Act as permits
 sale of beer, spirits, or wine at fairs or races without an excise
 license shall be and the same is hereby repealed.(d)

13. *Occasional license may be granted to victuallers to
 sell beer, spirits, &c., at such time and place as the Com-
 missioners of Inland Revenue shall approve.]* It shall be
 lawful for the Commissioners of Inland Revenue, whenever they
 shall consider it conducive to public convenience, comfort, and
 order, and with the consent in writing of two justices of the
 peace usually acting at the petty sessions for the petty sessional
 division within which the place of sale is situate, to authorise
 any officer of excise to grant to any person who shall be duly
 authorised to keep a common inn, alehouse, or victualling-house,
 and who shall have taken out the proper excise licenses to sell
 therein beer, spirits, wine, or tobacco, an occasional license under

c) This made all retail beer licenses conform to the rule laid
 down as to publican's licenses by 9 Geo. 4, c. 61, s. 13, *ante*, p. 201.
 Some parts of this section are left out, being repealed by 38 & 39
 c. 60.

d) See 26 & 27 Vict. c. 33, s. 21.

This Act put an end to all customs in localities to sell at fairs
 without a license: *Huxham v. Wheeler*, 3 H. & C. 75; 33 L. J. M. C.
 1; 10 L. T. 342.

Appndx. this Act empowering him to sell the like articles for which he shall have taken out such licenses as aforesaid at any such place, and for and during such space or period of time, not exceeding three consecutive days at any one time, as the commissioners shall approve, and as shall be specified in such occasional license; and any person who shall have taken out such occasional license shall not be liable to any penalty or forfeiture whatever by reason or on account of his selling the articles mentioned in the said license during the time and at the place specified therein; provided that no such occasional license shall authorise the sale of any beer, spirits, or wine, except during the hours after sunrise and before sunset; and providing that the said license shall not protect any such person in the sale of any of the articles herein mentioned, unless he shall at the time of such sale produce such license when requested to do so by any officer of excise, or by any constable or police officer; and shall any such license be granted for the sale of any of the articles herein mentioned on any Sunday, Christmas Day, or Good Friday, or on any day appointed for a public fast or thanksgiving; provided also, that the provisions of this clause shall not extend to Scotland.(a)

* * * * *

15. *Licenses granted under 23 Vict. c. 27, and 23 & 24 Vict. c. 107, may be transferred as other excise licenses in case of the removal of the licensed person.*] The provisions contained in the twenty-first section of the Act passed in the sixth year of the reign of King George the Fourth, chapter eighty-one, relating to the transfer of excise licenses in the case of the removal of any person from the house or premises at which he shall be licensed under that Act, shall be and the same are hereby extended to licenses granted under the Act passed in the twenty-third year of the reign of Her present Majesty, chapter twenty-seven, and the Act passed in the twenty-third and twenty-fourth years of Her said Majesty's reign, chapter one hundred and seven, respectively: Provided that no license granted under

(a) See 26 & 27 Vict. c. 33, s. 20, which required only the consent of one justice, and the law was further altered as there stated.

Where a justice, who was not entitled under this section to grant the occasional license, as not "usually acting for the petty criminal division" nevertheless did grant such license, it was held that the licensed victualler could not be convicted of selling without a license, as the license was good on the face of it: *Stevens v. Emson*, 1 Ex. D. 100; 40 J. P. 484; 45 L. J. M. C. 63; 33 L. T. 821.

two last-mentioned Acts for the sale of foreign wine
 be consumed upon the premises where the same shall
 be transferred by the officers of excise, unless the
 such license shall be duly licensed to keep a refresh-
 ment-house, or unless he shall produce to such officers a certi-
 ficate of the justice of the peace acting for the city, borough,
 or town in which the house and premises are situated, that
 he does not object to such transfer being made, and
 that no such license so transferred shall authorise the
 holder to carry on the business mentioned therein for a longer
 period than five weeks from the date of such transfer, unless he
 meantime have qualified himself to become the holder
 of the like kind according to the provisions of the
 said Acts. (b)

Appendix.

* * * *

25 & 26 VICT. CAP. 38.

To amend the Laws relating to the Sale of
 . [17th July, 1862.]

That section 12 of 24 Geo. 2, c. 40, enacting that
no person should be allowed to recover any debt for spirituous
liquors contracted at one time to the amount of 20s.
by any enactment repealed.] Whereas by 24 Geo. 2, c. 40,
amongst other things enacted, that no person or persons
shall be entitled unto, or maintain any cause, action,
or recover either in law or equity, any sum or sums
of debt, or demands whatsoever for or on account of any
liquors, unless such debt shall have really and bona
fide been contracted at one time to the amount of twenty
pounds upwards, nor shall any particular article or item in
such debt or demand for distilled spirituous liquors be allowed
to be recovered where the liquors delivered at one time, and men-
tioned article or item, shall not amount to the full value
of such debt or demand at the least: And whereas it is expedient that
the said enactment should be repealed so far as is herein-
before enacted: Be it therefore enacted by the Queen's most

That section of this statute removed some doubt as to the
rights of the vintners of the city of London. See Licensing Act,
and notes.

Appndx. excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said enactment as is hereinbefore recited shall stand, and the same is hereby repealed, so far only as relates to spirits and liquors sold to be consumed elsewhere than on the premises where sold, and delivered at the residence of the purchaser thereof in quantities not less at any one time than a repeat quart.(a)

(a) The Tippling Act referred to in this section enacts (24 Geo. 2, c. 12): "No person or persons whatsoever shall be entitled to or maintain any cause, action, or suit for, or recover either in law or equity, any sum or sums of money, debt, or demands whatsoever, for or on account of any *spirituous liquors*, unless such debt shall have been contracted at one time to the amount of 20s. upwards; nor shall any particular article or item in any account demand for distilled spirituous liquors be allowed or maintained when the liquors delivered at one time, and mentioned in such article or item shall not amount to the full value of 20s. at the least, and that without fraud or covin, and where no part of the liquors so sold or delivered shall have been returned or agreed to be returned directly or indirectly, and in case any retailer of spirituous liquors, with or without a licence, shall take or receive any pawn or pledge from any person or persons whatsoever, by way of security for the payment of any sum or sums of money owing by such person or persons for such spirituous liquors or strong waters, every such person or persons offending herein shall forfeit and lose the sum of 40s. for each and every pawn or pledge taken in or received by him or them, to be levied and recovered by warrant under the hand and seal of one justice of the peace where the offence is committed, and that one moiety thereof shall be to the use of the poor of the parish where such offence is committed, and the other moiety to the informer or informers; and the person or persons to whom any such pawn or pledge doth or shall belong, shall have the same remedy for recovering such pawn or the value thereof as if it had never been pledged:" 24 Geo. 2, c. 40, s. 12.

The statute 24 Geo. 2, c. 40, was held to apply to spirits sold by another publican to sell again: *Hughes v. Done*, 1 Q. B. 294. If the aggregate of price for several kinds of spirits exceed 20s., the statute did not apply: *Owens v. Porter*, 4 C. & P. 367; nor did it apply to spirits supplied to a guest resident in his house by a hotel keeper: *Proctor v. Nicholson*, 7 C. & P. 67. If supplied to people dining at a tavern the small spirit items could not be recovered: *Barneby v. Hutchinson*, 5 B. & Ald. 241; *Hughes v. Done*, 1 Q. B. 294. In some cases, though the demand was not recoverable, it would be allowed on a mutual settling of accounts: *Crooksbank v. Ross*, 1 C. & P. 19; *Dawson v. Remnant*, 6 Esp. 24. If a bill of exchange is given for the value under 20s., the statute was a good defence: *Steele v. Gillmore*, 3 Taunt. 226. The vendor of spirits under 20s. might

26 & 27 VICT. CAP. 33.

ACT for granting to Her Majesty certain Duties of Inland Revenue ; and to amend the Laws relating to the Inland Revenue. [29th June, 1863.]

* * * * *

Licensed beer dealers may take out additional license for beer by retail not to be consumed on the premises.]

and after the passing of this Act any person who, in England or Ireland, shall have taken out an excise license to sell beer in casks containing not less than four-and-a-half bushels, or in not less two dozen reputed quart bottles at one time to be drunk or consumed elsewhere than on his premises, shall take out an additional license on payment of the excise duty of one pound one shilling, and five per cent. thereon ; and the Act shall authorise such person to sell beer in any less quantity than in any other manner than as aforesaid, but not to be drunk or consumed on the premises where sold ; and such additional license shall be granted without the production of any certificate of possession of any other qualification than the license herein mentioned.(b)

to apply a payment made by the customer generally to satisfy this though it could not be sued for : *Philpott v. Jones*, 2 A. & E. 41. The County Court Act, 51 & 52 Vict. c. 43, s. 182, no action is brought or be maintainable in any county or other court to recover any debt or sum of money alleged to be due in respect of the sale of any ale, porter, beer, cider, or perry which was consumed on the premises where sold or supplied, or in respect of any money or goods sold or supplied, or of any security given for, in, or towards the payment of any such ale, porter, beer, cider, or perry.

This retail license was subjected to a valuation qualification in 1870, by 33 & 34 Vict. c. 29, s. 10. But it is not necessary that the licensed holder reside on the licensed premises : *R. v. De Rutzen* ; *Glamorganshire JJ.*, 1 Q. B. D. 55 ; 45 L. J. M. C. 57 ; 33 Q. B. D. 726 ; 24 W. R. 343 ; 40 J. P. 150. At the same time, the public house license and the retail license must apply to the same premises. A certificate of justices cannot now be obtained at a special transfer but only at the general annual licensing meeting : Licensing Act, 1874, section 31 ; 43 Vict. c. 6, s. 2.

Under the Act 32 & 33 Vict. c. 27, s. 8, a person already holding a license under 1 Will. 4, c. 64, was entitled also to apply in respect of the same premises for a beer dealer's additional retail license under the Act, and *vice versa* : *R. v. Blackburn JJ.*, 43 J. P. 111 ; 39 L. T. 201. But now both or either can be refused at discretion : 43 Vict. c. 6 ; 44 Vict. c. 34.

Appndx. *2. Duty on retail beer licenses taken out by licensed victuallers who do not sell spirits.] This duty was declared to be 3l. 3s. and 5 per cent. thereon in lieu of the duty then payable*

* * * * *

18. Licenses granted to refreshment house keepers retail foreign wine to include the sale of sweets and wines.] Every license taken out under the provisions contained in the two several Acts, 23 Vict. c. 27, and c. 107, respectively by a licensed keeper of a refreshment house, to sell therein retail, foreign wine, to be consumed in such house or on premises belonging thereto, shall authorise and include the sale of sweets, made wines, mead, and metheglin, by retail, to be consumed in the said house or on the said premises.(a)

19. Alteration of duty on a victualler's occasional license In lieu of the duty now chargeable on a victualler's occasional license, specified in Schedule (B.) of the Act 25 & 26 Vict. there shall be charged and paid the following duty ; (thus say,)—

For and upon every occasional license to be granted to a person who shall be duly authorised to keep a common alehouse, or victualling-house, and licensed to sell therein beer, spirits, wine, or tobacco, to sell the like article which he shall be so licensed at any such other place, and during such space or period of time not exceeding five days as shall be specified in such occasional license, the duty of two shillings and sixpence for every day so specified aforesaid for which the same shall be granted :

Provided always that when any person shall have taken out an occasional license for six successive days, and shall desire to take out another occasional license for a time in immediate succession, or only separated by the intervention of Sundays or holidays, then the duty chargeable for every license after the first and for any number of days not exceeding six, shall not exceed two shillings.

20. Alteration of the law relating to occasional licenses Whereas it is expedient to alter and amend the conditions and restrictions upon and under which occasional licenses to be

(a) A license to sell foreign wine, whether held by a refreshment house keeper or not, and whether by wholesale or retail, now is regulated by 38 & 39 Vict. c. 23, s. 9.

or wine may be granted and used, as provided by the Appndx.
 tenth section of the Act passed in the twenty-fifth and twenty-
 years of Her Majesty's reign, chapter twenty-two: Be it
 ed as follows :—

That the consent of one justice of the peace, as in the said
 section mentioned, only, shall be necessary :

That the hours during which such occasional license shall
 authorise the sale of any beer, spirits, or wine shall
 extend from [such hour not earlier than sunrise until
 such hour not later than ten o'clock at night, as may be
 specified in that behalf in the consent given by the
 justice for the granting of such occasional license.]

That upon the occasion of any public dinner or ball, it shall
 be lawful for the person who shall have obtained an
 occasional license under the provisions of the said Act
 to sell the said liquors during such hours before or after
 sunrise or sunset as shall be allowed and specified in that
 behalf in the consent to be given by the justice of the
 peace for the granting of such occasional license. (b)

. Section 12 of 25 & 26 Vict. c. 22, not to prohibit persons
 ed by the excise from selling beer, spirits, or wine at fairs or
 (c)

26 & 27 VICT. CAP. 41.

*ACT to amend the law respecting the Liability of Inn-
 keepers, and to prevent certain Frauds upon them.*

[13th July, 1863.]

THAT it is expedient to amend the law concerning the liability
 keepers in respect of the goods of their guests in manner
 after mentioned: Be it therefore enacted by the Queen's
 excellent Majesty, by and with the advice and consent of the
 spiritual and temporal, and Commons, in this present
 ment assembled, and by the authority of the same, as
 follows; (that is to say,)

The words within brackets were inserted by the Licensing Act,
 s. 19.

consent of the justice here mentioned implies that he has a
 tion, and that he does not act ministerially.

The law as to fairs and races was further altered by 27 & 28
 s. 18, s. 5, and Licensing Act, 1874, section 18, so that in all cases
 s and races the party attending must get an occasional license
 of justice.

Appndx. 1. *Innkeeper not to be liable for loss, &c., beyond 30l., except in certain cases.*] No innkeeper shall, after the passing of this Act, be liable to make good to any guest of such innkeeper any loss of or injury to goods or property brought to his inn, whether being a horse or other live animal, or any gear appertaining thereto, or any carriage, to a greater amount than a sum of thirty pounds, except in the following cases; (that is to say)

- (1) Where such goods or property shall have been stolen, lost, or injured through the wilful act, default, or neglect of such innkeeper or any servant in his employ:
- (2) Where such goods or property shall have been deposited expressly for safe custody with such innkeeper:

Provided always, that in the case of such deposit it shall be lawful for such innkeeper, if he think fit, to require, as a condition of his liability, that such goods or property shall be deposited in a box or other receptacle, fastened and sealed by the person depositing the same. (a)

(a) The word "wilful" applies to the word "act" only, and not to fault or neglect: *Squire v. Wheeler*, 16 L. T. 93.

An innkeeper is at common law liable for the safe keeping of the guests' goods, except for loss by the act of God or the king's enemies, or when the guest has been negligent: *Morgan v. Rarey*, 6 H. & N. 265; 25 J. P. 376; *Armistead v. Wilde*, 17 Q. B. 261; 16 J. P. 5; 20 L. J. M. C. 521; *Cushill v. Wright*, 6 E. & B. 891; 20 J. P. 678. It is the fact of the person being a guest that makes the innkeeper liable to receive the goods, and horse and carriage, and to keep them safe: *Smith v. Dearlove*, 6 C. B. 132. And while the guest is in the house the innkeeper is bound to take reasonable care so as to prevent any danger to him: *Sandys v. Florence*, 47 L. J. C. P. 598; 42 J. P. 712. But if in the middle of the night a guest wander about the hotel and fall down a shaft, the innkeeper may be guilty of no neglect: *Walker v. Midland Railway Company*, 51 J. P. 116. If an intending guest leaves goods with an innkeeper, but never becomes a guest, the innkeeper incurs no such liability for safe keeping: *Strauss v. County Hotel*, 12 Q. B. 127; 48 J. P. 69; 53 L. J. Q. B. 25; 49 L. T. 601; 32 W. R. 17. The compulsion upon an innkeeper to receive guests applies only to travellers: see 35 & 36 Vict. c. 94, s. 49, and notes, *ante*, p. 88. A hotel keeper is liable for the safety of the guests' goods, because he is usually an innkeeper: *Jones v. Osborn*, 2 Chitt. 434. A boarding-house keeper has not the liabilities of an innkeeper: *Dansey v. Richardson*, 3 E. & B. 144; 23 L. J. Q. B. 217. The keeper of a tavern, or place where people have sleeping and boarding accommodation, though not bound to receive any but travellers, yet has the innkeeper's lien on the guest's goods if he receive the guest and the goods: *Thompson v. Lee*, 3 B. & Ald. 283. The liability for the safety of the guests' goods arises out of the profession of keeping a common inn, which implies readiness to receive travellers if he has accommodation: *Holder v. Soulby*,

tion to receive property of guests for safe Appendx.

If any innkeeper shall refuse to receive for safe before mentioned, any goods or property of his guest, and the guest shall, through any default of such innkeeper, deposit such goods or property as aforesaid, such guest shall not be entitled to the benefit of this Act in respect of such goods or property.

[*of law, &c., to be conspicuously exhibited.*] Every innkeeper shall cause at least one copy of the first section of this Act in respect of such goods or property as shall be deposited at his inn while such copy shall be so exhibited. (b)

54; 29 L. J. C. P. 246; 8 W. R. 438. Part of a hotel or a mere refreshment bar or victualling-house, as to which the usual liability does not attach: *R. v. Rymer*, 2 Q. B. D. 199; 46 L. J. M. C. 108; 35 L. T. 774; 25 W. R. 415. If the hotel belongs to a company, and the license is granted to the company, the liability of an innkeeper lies on the company and not on the innkeeper: *Dixon v. Birch*, L. R. 8 Ex. 135; 42 L. J. Ex. 135; 11 W. R. 375. And the keeper's liability would not be affected by any agreement to divide his profits with a third person: *Day v. B. & C.* 14; 32 L. J. Ex. 171; 8 L. T. 205; 11 W. R. 375. A manager who orders liquors without authority cannot bind the innkeeper: *Dawn v. Simmons*, 44 J. P. 264; 41 L. T. 783; 28 W. R. 415.

There have often arisen as to what acts of the guest will amount to a defence to the innkeeper, such as the not locking the bedroom door before going to sleep: *Spice v. Bacon*, 2 Q. B. D. 463; 46 L. J. Q. B. 713; 42 J. P. 261; 36 L. T. 896; 26 W. R. 415. *Oppenheim v. White Lion Co.*, L. R. 6 C. P. 515; 40 L. J. C. P. 25; 25 L. T. 93; *Herbert v. Markwell*, 45 L. T. 649; 46 W. R. 415. Where the guest has valuables in his possession, and omits to take them to the care of the innkeeper, this may be treated as negligence: *Jackson v. Jackson*, 29 L. T. 399; 37 J. P. 776.

A verbal error in the copy will not vitiate the notice, if the substance of the Act appears: *Spice v. Bacon*, 2 Q. B. D. 463; 46 L. J. Q. B. 713; 36 L. T. 896; 42 J. P. 261.

See *Notice of innkeeper*, see further, notes to 41 & 42 Vict. c. 38,

and as to signboard and premises of licensed persons, 9 Geo. 4, c. 6, s. 207.

[*taxes, and restrictions on innkeepers.*] Some exceptional provisions have been given to innkeepers in reference to taxes.

It is not necessary for a license to be taken out under 32 & 33 Vict. c. 38 by any hotel keeper, retailer of intoxicating liquor, or house keeper, for any servant wholly employed by him for

ppndx. **4. Interpretation of terms.]** The words and expressions hereinafter contained, which in their ordinary significance have a more confined or a different meaning, shall in this Act, where the nature of the provision or the context of the Act exclude such construction, be interpreted as follows; that is to say, the word "inn" shall mean any hotel, inn, tavern, house, or other place of refreshment, the keeper of which is by law responsible for the goods and property of his guests; the word "innkeeper" shall mean the keeper of any such

27 & 28 VICT. CAP. 18.

AN ACT to grant certain Duties of Customs and Revenue. [13th May, 1865]

5. Occasional licenses may be granted to persons who have taken out licenses under 23 & 24 Vict. c. 27 (Refreshment Houses and Wine Retailers); under 25 Vict. c. 85 (Beer Retailers); and under 6 Geo. 4 (Tobacco Retailers).] It shall be lawful for the Commissioners of Inland Revenue, whenever they shall consider it necessary for the accommodation of the public, to authorise any officer to grant (upon payment of the respective duties in the

the purposes of business: 36 & 37 Vict. c. 18, s. 4. An "male servant" shall not include a servant only employed each day, and not residing in the employer's house: 39 & 40 Vict. c. 11, s. 5.

As to the *inhabited house* duty, every inhabited dwelling-house with the household and other offices, yards, and garden occupied and charged, is or shall be worth the rent of 20l. by the year, which shall be occupied by any person who shall in the said dwelling-house the business of a hotel keeper, or a beer or coffee-house keeper, although not licensed to sell there beer, ale, wine, or other liquors there, shall be charged for each year the annual value of any such dwelling-house the sum of 34 & 35 Vict. c. 103, s. 31.

An innkeeper or victualler, or one licensed to sell beer by retail, or any one employed by such is not allowed to hold a license as a game dealer: 1 & 2 Will. 4, c. 32, s. 18. But any innkeeper or victualler may sell game for consumption in his own house, such game to have been procured from some licensed game dealer: *Ibid.* s. 26.

Restrictions on innkeepers and licensed persons as to the payment of wages are stated in 46 & 47 Vict. c. 31, and notes, p.

and in schedule (B.) to this Act) an occasional license in all and respective cases hereinafter mentioned ; (that is to say any person who shall have taken out an excise license under the Act 23 & 24 Vict. cc. 27, 107, respectively, to keep a public house, or to sell by retail in a refreshment house wine to be consumed therein ; or an excise license under 4 & 5 Will. 4. c. 85, to retail beer to be drunk or consumed upon the house or premises where sold ; or an excise license under the Act, 6 Geo. 4, c. 81, to deal in or sell tobacco or snuff) and every such occasional license shall authorise any such licensee as aforesaid to exercise and carry on the same trade and business as he shall be authorised to carry on by virtue of the license granted under the said Acts respectively as aforesaid at the place (other than the place for which his original license was granted), and for and during such space or period of time, not exceeding three consecutive days at any one time, as the Commissioners shall approve, and as shall be specified in such occasional license : Provided that the said occasional license shall not be granted to any such person in the carrying on of any such trade or business as aforesaid unless he shall produce such license when requested so to do by any officer of excise, or by any justice of the peace or police officer, at the time of exercising such trade or business ; and provided also, that the conditions and restrictions contained in the twentieth section of the Act of the twenty-sixth year of Her Majesty's reign, chapter thirty-three, relating to occasional licenses, shall apply to the occasional licenses to be granted under this Act (except in the case of licenses to sell tobacco or snuff). (a)

Appndx.

The duty fixed by Schedule (B.) was for occasional license to a public house keeper, for each day *nil* ; for same to retail foreign wine to be consumed on the premises, per day, one shilling ; same to be consumed for consumption on the premises, per day, one shilling. *Other*, Licensing Act, 1874, sections 18, 19, *ante*, p. 174, and 20 Vict. c. 22, s. 13, *ante*, p. 259.

Occasional license here authorised to those holding retail wine licenses is made subject to the conditions in 26 & 27 Vict. c. 20, and one of those conditions is that the license is to be also subject to 25 & 26 Vict. c. 22, s. 13, which says the license is not to be valid for more than six days. On the other hand, a publican's occasional license, created by 26 & 27 Vict. c. 33, s. 19, is not to exceed six days. Assent of a justice is needed as well as the authority of the Commissioners of Inland Revenue : *Hannant v. Foulger*, L. R. 2 Q. B. 119 ; 8 B. & S. 425 ; 15 W. R. 787 ; 31 J. P. 628.

Appndx.

27 & 28 VICT. CAP. 64.

AN ACT for further regulating the closing of Public houses and Refreshment Houses within the Metropolitan Police District, the City of London, certain Corporate Boroughs and other Places.(a)

[25th July, 1864.]

WHEREAS it is expedient to amend the law relating to the closing of refreshment houses within the metropolitan police district, of London, certain corporate boroughs and other places :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. *Short title.*] This Act may be cited for all purposes as the "Public-house Closing Act, 1864."

2. *Limits of Act.*] (b)

3. *Definition of "corporate borough," &c.*] *Repealed* 38 & 39 Vict. c. 66.

4. *Definition of "refreshment houses," &c.*] "Refreshment house" shall in this Act have the same meaning as it has in the Act 23 Vict. c. 27, s. 6.

Excisable liquor shall mean any spirits, foreign wine, beer, cider, sweets, or made wines, defined by the Acts relating to excise.(c)

(a) This Act was *repealed* by Licensing Act, 1872, except in regard to houses *not selling intoxicating liquors*. See Schedule, section 24. The Act so far as unrepealed, has to some extent been altered by Licensing Act, 1874, section 11, *ante*, p. 163. Thus it has been extended to the whole of England instead of being restricted to the metropolis.

The Licensing Act, 1872, schedule, also repealed the prior Acts relating to the sale of liquors on Lord's Day, viz., 11 & 12 Vict. c. 49, & 18 & 19 Vict. c. 118.

(b) Now extended to all England by 37 & 38 Vict. c. 49, s. 11.

(c) See 23 Vict. c. 27, s. 6, and notes, *ante*, p. 242.

As to the closing of refreshment houses.] No person Appndx.
 within the limits of this Act shall open or keep open any refreshment house or sell or expose for sale or consumption in any refreshment house any refreshments or any article whatsoever during the hours of [the night or morning at which premises are licensed for the sale of intoxicating liquors by retail, situate in the place as such refreshment houses, are required to be closed] and four o'clock in the morning.
 Any person acting in contravention of this section shall be liable to a penalty not exceeding five pounds, to be recovered in any manner as provided by the Act 11 & 12 Vict. c. 43.(d)

Occasional license.] If any keeper of a refreshment house licensed within the limits of this Act applies to the local authority hereinafter mentioned for a license exempting him from the provisions of this Act on any special occasion or occasion, it shall be lawful for the local authority, if in its discretion it thinks fit so to do, to grant to the applicant an occasional license exempting him from the provisions of this Act during certain times and on a special occasion or occasions to be specified in the license; and no keeper of a refreshment house to whom an occasional license has been granted under this Act shall be subject to a penalty for a contravention of this Act during the time to which this occasional license extends, but he shall not be exempted from an occasional license from any penalty to which he may be liable under any other Act of Parliament.

Definition of "local authority."] The following persons and bodies of persons shall be deemed to be local authorities for the purposes of this Act:—

In the metropolitan police district, the commissioner of police for the metropolis, subject to the approbation of one of Her Majesty's principal secretaries of state:

In the city of London and the liberties thereof, commissioner of city police, subject to the approbation of the Lord Mayor of the said city:(e)

As to adoption of Act by corporate borough.]
 As amended by 38 & 39 Vict. c. 66.

The words *within brackets* were inserted by the Licensing Act, 1874 & 38 Vict. c. 49, s. 11, *ante*, p. 163.

Part of this section repealed by 38 & 39 Vict. c. 66. And the words "local authority" was defined by 28 & 29 Vict. c. 77, s. 5, *post*, to mean more justices in petty sessions.

Appndx. 10. *Not to apply to sales at railway stations between one and four in the morning.*] Nothing herein contained shall apply to the sale at a railway station between the hours of one and four o'clock in the morning of refreshments to persons arriving at or departing from such station by railroad.(a)

28 & 29 VICT. CAP. 77.(b)

AN ACT to amend the Act of the Twenty-seventh and Twenty-eighth Victoria, Chapter Sixty-four, commonly called "The Public-house Closing Act, 1864."

[29th June, 1865.]

WHEREAS it is expedient to amend "The Public-house Closing Act, 1864:" Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. *Short title.*] This Act may be cited for all purposes as "The Public-house Closing Act, 1865."

2. *Power to justices to grant licenses to refreshment house keepers suspending operation of recited Act.*] It shall be lawful for the licensing justices at the time of granting or renewing any license, upon the production of such evidence as they shall deem sufficient to show that it is necessary or desirable, for the accommodation of any considerable number of persons attending any public market, or following any lawful trade or calling, if, in the discretion of such justices, they shall think fit, to grant to any keeper of a refreshment house(c) whose place of business is in the immediate neighbourhood of such market, or of the place where the persons follow such lawful trade or calling, a license exempting him from the provisions of the hereinbefore-mentioned Act between the hours of two and four o'clock in the

(a) See also Licensing Act, 1874, section 10, *ante*, p. 159.

(b) This Act was repealed by Licensing Act, 1872, as regards houses selling intoxicating liquor. As to refreshment houses it is still in force.

(c) As to what houses are refreshment houses within the meaning of these Acts of 27 & 28 Vict. c. 64, and 28 & 29 Vict. c. 77, see notes to 23 Vict. c. 27, s. 6, *ante*, p. 242.

r any part of such hours, during such days, times, or **Appndx.**
 all be specified in such license; and no keeper of a
 t house to whom such license has been granted under
 all be subject to any penalty for a contravention of the
 re-mentioned Act during the days or times to which
 se extends, but he shall not be exempted by such
 n any penalty to which he may be subject under any
 of Parliament; provided that a printed notice stating
 id special hours during which, and the class of persons
 the house is open under such license shall be affixed in
 us position outside the house.

er to withdraw such license.] It shall be lawful for
 es, from time to time, as and when it may seem fit to
 r to withdraw such license altogether, or to alter, vary,
 he same in such manner as such justices may deem
 r expedient.

to be in force in certain districts, &c.] Repealed by
 ct. c. 66.(d)

ices of the peace to grant licenses.] So much of
 clause of the said recited Act as defines the local
 to be a commissioner, superintendent, or other chief
 olice shall be repealed, and instead thereof the local
 shall be, in any district, city, or town where petty
 held, except in the metropolitan police district, two
 the peace sitting in petty sessions, and in any other
 ty, or town, two justices of the peace acting in the
 y, or town.

to be construed with recited Act.] This Act shall be
 nstrued, and taken as part of the said hereinbefore-
 Act.

Act 27 & 28 Vict. c. 64, was by the Licensing Act, 1874,
 led to all England as regards refreshment houses not selling
 ; liquors.

Appendix.

INLAND REVENUE ACT, 1861.

30 & 31 VICT. CAP. 90.

* * * * *

17. *Penalty upon unlicensed persons (not being travellers for licensed persons) soliciting orders for spirits, wine, &c.* If any person shall solicit, take, or receive any order for spirit wine, or other article, for the dealing in, retailing, or selling whereof an excise license is by law required, without having force a proper excise license authorising him so to do, he shall forfeit the penalty imposed by law upon a person dealing retailing, or selling such article without having an excise license in force authorising him so to do; and in any case in which place of business or residence of the offender shall not be known to the officer of excise who shall exhibit any information for recovery of such penalty as aforesaid, or, if known, shall be in the United Kingdom, it shall be sufficient service of the writ and summons required to be given to a defendant by any law of excise if the same be left at the house or place where the offender shall have solicited, taken, or received any such order as aforesaid addressed to such offender: Provided always, that nothing herein contained shall be deemed to apply to the sale of any spirit foreign wine while the same shall be and remain in the warehouse or warehouses in which the same shall have been deposited, lodged, or secured according to law, before payment of duty on the importation thereof, where such spirits or foreign wine shall be sold in a quantity not less than one hundred gallons at one time, or to impose a penalty upon a *bona fide* traveller taking orders for goods which his employer is duly licensed to deal in and sell. (a)

18. *Reduction of duty on licenses to retailers of malted spirit.* After the first day of October in the year of our Lord one thousand eight hundred and sixty-seven the annual duty payable upon a license to be taken out by a retailer of malted spirit under the provisions contained in the Act 24 & 25 c. 91, shall be the sum of ten shillings. (b)

* * * * *

(a) See as to this, Act, 1872, and notes, *ante*, p. 4.

(b) See 43 & 44 Vict. c. 24, *post*.

ALE AND BEERHOUSE ACT, 1869.

Appndx.

32 & 33 VICT. CAP. 27.

*to amend the Law for Licensing Beerhouses, and
make certain alterations with respect to the Sale by
Retail of Beer, Cider, and Wine.*

[12th July, 1869.]

by the Acts relating to the general sale of beer and
ale in England; (that is to say,)

Act of 11 Geo. 4 and 1 Will. 4, c. 64;

Act of 4 & 5 Will. 4, c. 85;

Act of 3 & 4 Vict. c. 61;

Act of 24 & 25 Vict. c. 21;

as made for the grant of licenses by the excise for the
retail of beer and cider upon the terms and conditions
specified: (c)

Whereas by an Act of 26 & 27 Vict. c. 33, it is enacted,
that any person who after the passing of that Act has taken out
a license to sell strong beer in casks containing not
more than four-and-a-half gallons, or in not less than two dozen
small bottles, at one time, to be drunk or consumed else-
where on his premises, may take out an additional license
to sell the same at retail, and that the duties of the excise therein mentioned, and that the
Act doth authorise such person to sell beer in any less quantity
than in the other manner than as aforesaid, but not to be drunk
or sold on the premises where sold, and that such additional
license shall be granted without the production of any certificate,

beer licenses mentioned in this recital, whether those
granted under the Beerhouse Acts (1 Will. 4, c. 64; 4 & 5 Will. 4,
c. 85; 3 & 4 Vict. c. 61), or those called the beer dealer's additional
licenses obtained under 25 & 26 Vict. c. 33, or the table-beer
licenses issued under 24 & 25 Vict. c. 21, s. 3, have all been affected
by the provisions of the Act of 26 & 27 Vict. c. 33, which have
thus giving the licensing justices the same discretion as they
had with respect to alehouse licenses under 9 Geo. 4, c. 61.
as to all beerhouses, except those in-door houses continuously
licensed since 1869: 32 & 33 Vict. c. 27, s. 19; and except cider-
houses licensed under the Beerhouse Acts.

Appndx. or the possession of any other qualification than the license therein first mentioned (26 & 27 Vict. c. 33):

And whereas provision is made for the grant of licenses by the excise for refreshment houses and for the sale of wine by retail, and for other purposes, by an Act of 23 & 24 Vict. c. 27:

And whereas it is expedient to make better provision with regard to the granting of the licenses hereinbefore mentioned, and for regulating the houses and shops in which beer, cider, and wine are sold by retail:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows: (that is to say,)—

1. *Application of Act.*] This Act shall not apply to Scotland or Ireland.

2. *Definition of "beer" and "cider."*] For the purposes of this Act the term "beer" shall include ale and porter, and the term "cider" shall include perry.(a)

3. *Short title.*] This Act may be cited as "The Wine and Beerhouse Act, 1869."

4. *Retail licenses not to be granted without certificate granted under this Act.*] From and after the fifteenth of July, one thousand eight hundred and sixty-nine, no license or renewal of a license for the sale by retail of beer, cider, or wine, or any of such articles, under the provisions of any of the said recited Acts shall (save as in this Act otherwise provided) be granted except upon the production and in pursuance of the authority of a certificate granted under this Act.

Any license granted or renewed in contravention of this enactment shall be void.(b)

5. *Certificates by whom to be granted.*—9 Geo. 4, c. 61.] Certificates under this Act shall be granted by the justices

(a) The word beer now includes botanic beer, or liquor brewed from sugar and water, which contains spirit to the extent of 6 or 7 per cent, and therefore an excise license is required for selling such liquor: 48 & 49 Vict. c. 51, s. 4; *Howarth v. Minns*, 51 J. P. 7. The former Act was otherwise: *Leah v. Minns*, 47 J. P. 198.

(b) The mode of obtaining the certificate is the same as in case of a license under the Act 9 Geo. 4, c. 61, s. 1, *ante*, p. 188. This certificate is not required for a wine dealer's additional retail license, or a spirit dealer's retail license under certain circumstances: *Licensing Act, 1872*, section 73, *ante*, p. 127.

d at the general annual licensing meeting held in pur- **Appndx.**
 an Act of the session of the ninth year of the reign of
 rge the Fourth, chapter sixty-one, intituled "An Act to
 he granting of licenses to keepers of inns, alehouses, and
 ig houses in England," or at some adjournment of such
 held in pursuance of the said last-mentioned Act. [The
 is section was *repealed* by 33 & 34 Vict. c. 29, s. 4.](c)

rm of certificate.] A certificate under this Act shall
 ie name and address of the person thereby authorised to
 license, the description of license or licenses authorised
 nted to him, and whether such license or licenses is or
 granted for the sale of beer, cider, or wine to be con-
 or off the premises, and the situation of the house or
 respect of which such grant is authorised. It shall be
) for one year from the date of its being granted. [The
 he section is *repealed* by Licensing Act, 1872; see
]

tice of application.] Every person intending to apply
 stices for a certificate under this Act shall, twenty-one
 ast before he applies(e) give notice in writing of his inten-

s section is not directory but imperative. Hence where the
 xcise officers, and applicant were all ignorant of the repeal of
 und a license was granted under it by mistake, the license
 to be a nullity, and the holder liable for selling without a
earson v. Broadbent, 36 J. P. 485.

e of the general annual licensing meeting and its adjourn-
 ated in 9 Geo. 4, c. 61, ss. 1, 2, 3, 5, *ante*, pp. 187—197.
 sing Act, 1872, sections 37, 38, 50, modify the earlier statute.
 lournments, see 33 & 34 Vict. c. 29, s. 4, sub-section (4), and
 ict. c. 29, s. 11. See notes, *post*.

s is now altered, and the beginning and ending of the year
 the certificate is made uniform with publicans' licenses. See
 . 61, s. 13, *ante*, p. 201. See notes to 33 & 34 Vict. c. 29,
ist.

ms of certificates or licenses have been altered by the Secre-
 ate, in pursuance of the Licensing Act, 1872, section 48. See
 at the end of this volume.

s is the section which now contains the general law as to
 fore all applications for new licenses, for it was adopted and
 ed with an addition there declared into the Licensing Act,
 on 40, and made universal.

ie of the year for the application is specified in the Act
 . 61, ss. 1, 2, 3, 5; and the time from which the notices are
 is the date of the general annual licensing meeting, or any

Appndx. tion(a) to one of the overseers of the parish, township, or place in which the house or shop in respect of which his application is to be made is situate, and to [the superintendent of police of the district](b) and shall in such notice set forth his name and address and a description of the license or licenses for which he intends

adjournment thereof. Thus, if an applicant is not in time to give notice before the general meeting, he may yet be in time if the notices are given before the adjournment day: *R. v. West Riding JJ. Drake's Case*, L. R. 5 Q. B. 33; 34 J. P. 4; 10 B. & S. 840; 39 L. J. M. C. 17. In some cases he may fail at the general meeting, and be in time to give fresh notices for the adjournment, and apply on different materials: *R. v. Caulfield*, 46 J. P. 756; though he cannot usually apply again at the adjournment on the same materials: *Ex parte Rushworth*, 23 L. T. 120; 34 J. P. 676. See 9 Geo. 4, c. 61, section 4, and notes, *ante*, p. 195.

The mode of computing the twenty-one days for notice is to exclude the day of holding the general annual meeting or the adjournment day, and to exclude the day on which the notice is given: *R. v. Abberdale*, 14 Q. B. 856; *R. v. Shropshire*, 8 A. & E. 173; *Young v. Higgin*, 6 M. & W. 49; *Robinson v. Waddington*, 13 Q. B. 753; *Norton v. Salisbury*, 4 C. B. 32. And see Licensing Act, 1872, section 44, *ante*, p. 71.

As to the notices on the church door, any two consecutive Sundays may be selected within the twenty-eight days preceding the holding of the general annual meeting or adjournment day; but as to the twenty-one days a much longer notice would be equally good, the twenty-one days being the shortest time allowed. The church or chapel here mentioned means that of the Church of England; and if there is a notice board near the door, publication on such board will usually be sufficient: *Empson v. Metropolitan Board*, 25 J. P. 677; 34 L. T. 624.

(a) This notice may be served by post: 33 & 34 Vict. c. 29, s. 4; Licensing Act, 1872, section 70.

(b) The words in brackets were inserted by 33 & 34 Vict. c. 29, s. 4. Care must be taken to serve the superintendent either personally or by leaving the notice at his actual residence, and not merely at one of the police stations in the district: *R. v. Riley*, 53 J. P. 452.

As to what is a new license, and what is a renewal, see notes to Licensing Act, 1872, section 74, *ante*, p. 136.

General effect of section 7.] The general effect of this section is, that in all cases whatsoever, twenty-one days' notice must be given to the overseers and superintendent of police of the first application to justices; and if the house was not previously licensed for sale by retail the notice on the church door within the twenty-eight days must be superadded. But in future, if a certificate has been already given under this Act, and all that is wanted is renewal of the certificate to the same person and house, or in some cases to a different person and the same house, then neither of these notices need be given. As to renewals, see also Licensing Act, 1872, sections 42, 74.

d of the situation of the house or shop in respect of application is to be made ; and in the case of a house theretofore licensed for the sale by retail of beer, such person shall also within the space of twenty-before such application is made cause a like notice to and maintained between the hours of ten in the forenoon and five in the afternoon of two consecutive Sundays on such house or shop, and on the principal door or on doors of the church or chapel of the parish or place in which the house or shop is situate, or, if there be no such church or chapel, on some other public and conspicuous place within the parish or place.

When application is made to the justices for the grant of a license under this Act by way of *renewal* only, notice in pursuance of section 40 shall not be requisite.

Appendix

visions of 9 Geo. 4, c. 61, to grants of certificates of license.] All the provisions of the said Act of the ninth year of the reign of King George the Fourth as to the terms upon which licenses are to be made by the justices at the said general licensing meeting, and as to appeal from any act of any justice, so far as may be, have effect with regard to grants of licenses under this Act, subject to this qualification, that no

section 40 now extends to the notices required for new alehouse licenses under the Licensing Act, 1872, section 40.

In many new churches, a notice board is placed near the church door on which miscellaneous notices are usually affixed, it is convenient, as already stated, to affix these notices on such board, and the board is reasonably near the church door, and equal or better notice is thereby given.

Above the notices above described there must, as to new licenses, be also a notice advertised in a local newspaper in pursuance of the Licensing Act, 1872, section 40.

[*of premises.*] Where after a license has been obtained for a house to be used as an inn, the keeper of the inn buys an adjoining dwelling-house and adds it to the inn by opening interior communications, the licensee is usually required to apply for a new license, provided the licensee is likely to be satisfied that the premises are substantially the same as the premises formerly licensed : See *ante*, pp. 6, 136. And the same rule applies to a certificate. Notice of any important changes in the premises should always be brought to the notice of the justices at the next general annual meeting ; and it may be prudent even before applying for a new license to bring to the notice of the justices the intention to make such changes.

As to the forms of the notices, see notes to Licensing Act, 1872, *ante*, p. 71.

Appndx. application for a certificate under this Act in respect of a licence to sell by retail beer, cider, or wine not to be consumed on premises shall be refused, except upon one or more of the following grounds, viz. :—

- (1) That the applicant has failed to produce satisfactory evidence of good character :
- (2) That the house or shop in respect of which a licence sought, or any adjacent house or shop owned or occupied by the person applying for a licence, is of a disreputable character, or frequented by thieves, prostitutes, persons of bad character :
- (3) That the applicant having previously held a licence for sale of wine, spirits, beer, or cider, the same has been forfeited for his misconduct, or that he has through conduct been at any time previously adjudged disqualified.

General effect of this eighth section as altered.] This section merely laid down the rule that, as to out-door licences for wine, cider (afterwards extended to (off) spirits and sweets by the Lic. Act, 1872), the discretion of justices in granting both a new and a renewal of a licence, instead of being unlimited should be restricted to four grounds. That law existed till 1880 and 1883, when the restriction was also as to beer licences, and the same general or absolute discretion given to the licensing justices as they always enjoyed as regards publicans' licences. But this section still governs the law as to off-cider, off-sweets, and off-spirit licences.

The applicant on each *renewal* is still bound, if challenged, to receive proper notice under Licensing Act, 1872, section 42, to produce evidence of good character, and if he has been convicted or been complained of during the previous year, and the objection is made, or in open court by justices (provided, in the latter event, time is given to answer the objection), the justices may refuse to renew the licence certificate under this head : *R. v. Birmingham JJ.*, 40 J. P. 13 v. *Merthyr Tydvil JJ.*, 14 Q. B. D. 584 ; 54 L. J. M. C. 78 ; 41 213.

The justices have also a large discretion on all applications for licences of every description, as to the *quantum* or sufficiency of evidence given by the applicant on each of the four grounds, especially of his good character. And, in general, the applicant should rest satisfied with assuming that nothing is to be said against him, and ought to be prepared to give affirmative evidence by witness or written testimonials as to his character : *R. v. Hanley JJ.*, 41 102 ; 39 L. T. 444 ; *Ex parte Bendall*, 42 J. P. 88. In one case a previous statute a question of good character arose, where the holder was found to be cohabiting with a female : *R. v. Lees*, C. B. (N.S.) 584 ; 33 L. J. M. C. 231. Sometimes opposition is not on the want of the applicant's character, but on that of a previous holder of the licence.

fied from receiving any such license, or from selling any **Appndx.**
of the said articles :

That the applicant of the house in respect of which he
applies, is not duly qualified as by law is required :

valuation of premises.] The Beerhouse Act, 3 & 4 Vict. c. 51, also 23 Vict. c. 27, s. 8, and 33 & 34 Vict. c. 29, s. 10, prescribed a valuation referred to as regards the annual value of the premises, meaning of which is further explained by the Licensing Act, 1872, ss 45, 46, 47. The sufficiency of the annual value is estimated at the time of hearing the application : *R. v. Montagu*, 50 J. P. 55. There are no disqualifications as to the persons ; as being a sheriff's officer, L. 4, c. 64, s. 2 ; not being the real resident holder and occupier, Vict. c. 61, s. 1 ; being convicted of felony or of selling spirits without a license, 3 & 4 Vict. c. 61, s. 7 ; 23 Vict. c. 27, s. 22 ; 33 & 34 Vict. c. 29, s. 14 ; convicted of forging a certificate, 32 & 33 Vict. c. 27, s. 13 ; thrice convicted of selling without a license, &c., Act, 1872, s. 3. See also Act, 1872, sections 15, 30.

of justices as to four grounds.] It is the duty of the justices, on all applications, to see that these several statutory requirements are satisfied, and to refuse the license if they are not satisfied, even if on other grounds the justices might be satisfied as to the person applying. Though these are still good special reasons for refusing a license, yet the legislature has now, as above stated, conferred an absolute discretion on the justices to refuse all beerhouse licenses without any grounds whatever except as to in-door licensed beerhouses s. 869. This important change has been made by striking out of the Act all beer licenses (except those mentioned in section 19, *post*), and ordinary beer licenses or beer dealers' retail licenses, or table-beer licenses, so that justices have now the same ample discretion as to all beer licenses, whether out-door or in-door, as they have and always had in the case of alehouse or public-house licenses. These changes have been made by recent Acts, 43 Vict. c. 6, and 45 & 46 Vict. c. 34, *post*.

As to premises for which an alehouse license or a certificate under the Act for in-door consumption shall be hereafter applied for, see Licensing Act, 1872, section 45.

As to the meaning of the words " annual value " in 3 & 4 Vict. c. 61, s. 1, see *R. v. Montagu*, 50 J. P. 55, and the mode of ascertaining annual value, Licensing Act, 1872, sections 46, 47.

of grounds of decision.] Under this section when it still applies, if the justices refuse to grant a certificate, they are bound to state which of the four grounds they have so refused, for otherwise the applicant may not know what is his remedy : *R. v. Sykes* ; *R. v. Hudson*, 1 Q. B. D. 52 ; 45 L. J. M. C. 39 ; 40 J. P. 39 ; 33 L. T. 566 ; *R. v. King*, 141. And if the justices refuse on some ground other than these, a writ of *mandamus* may be obtained to compel them to hear and confine themselves to such grounds : *R. v. Monmouthshire JJ.*, 38 J. P. 807 ; *R. v. Smith & Southport JJ.*, L. R. 8 Q. B. 146 ; 37 J. P. 214 ; 28 W. R. 129 ; 21 W. R. 382 ; *R. v. Redditch*, 50 J. P. 246 ; *R. v. King*

Appndx. Where an application for any such last-mentioned certificate is refused on the ground that the house in respect of which

or *Manchester JJ.*, 20 Q. B. D. 43; 52 J. P. 164; 58 L. T. 607; 59 W. R. 600; 57 L. J. M. C. 20. And the justices are bound, even though not asked, to state on what ground they refuse the license: *parte Smith*; *R. v. Surrey JJ.*, 3 Q. B. D. 374; 47 L. J. M. C. 100; 42 J. P. 598; 26 W. R. 682; *R. v. Ashton-under-Lyne*, 37 J. P. 80.

The justices are, however, not bound to state in writing their reasons for refusing the license on the ground of not being duly qualified when they are asked to do so: *R. v. Cumberland JJ.*, 8 Q. B. D. 369; 37 J. P. 7; 51 L. J. Q. B. 142; 30 W. R. 178.

Terms or fees on which certificate granted.] The terms which are now declared by 33 & 34 Vict. c. 29, s. 4, to include the usual fees payable for licenses are the same for grant or transfer of certificates as for licenses under 9 Geo. 4, c. 61. The terms upon which the grant or transfer or renewal of an alehouse license is made are stated in 9 Geo. 4, c. 61, s. 15.

With regard to certificates granted by way of renewal, the only fees payable are 4s. to the justices' clerk, and 1s. for the constable serving notices. If the clerk demands or receives more, he will be liable to a penalty of 5l.: 33 & 34 Vict. c. 29, s. 4. The fees for renewal of an alehouse license are the same as for the original grant. To the above must also be added a fee of 1s. for the registration of each license under the Licensing Act, 1872, section 36.

Manner in which, and persons by whom grants made.] This section is now considerably modified by the Licensing Act, 1872, sections 37 and 38. With regard to *new certificates*, these can only be granted in counties by the justices at the general annual licensing meeting or adjournments, and confirmed by the county licensing committee. In boroughs having ten justices, the grant of a new certificate must be by the borough licensing committee and thereafter confirmed by the whole body of borough justices. In boroughs having less than ten justices the grant of a new certificate must be by the borough justices and confirmed by a joint licensing committee, consisting usually of the borough justices and three county justices. There is no appeal from the decision of these double bodies of licensing justices as to granting or refusing of a new certificate. But no confirmation is required for out-door licenses: Licensing Act, 1874, section 23.

As to grants of new certificates under the Wine and Beerhouse Act, 1869, and the Licensing Act, 1872, for *wine or spirits, or sweets or cider*, and to be consumed on the premises, the licensing justices will be bound by the conditions stated in the above section, that is to say, they can only refuse such a certificate on one of the four grounds specified: *R. v. Scott*, 22 Q. B. D. 401; 53 J. P. 119; 58 L. J. M. C. 78; 60 L. T. 224; 37 W. R. 301. And they will be equally bound by these conditions on applications for transfers: *Simmonds v. Blackheath JJ.*, 17 Q. B. D.

not duly qualified as by law is required, the justices by writing to the applicant the grounds of their Appndx.

P. 742; 55 L. J. M. C. 166; 35 W. R. 167. And they are bound on applications for renewal of the same licenses. Of the four grounds is inapplicable to houses having out-door (to which must be added out-door sweets, and out-door liqueur licenses), for these were never subject to any valuation. As to new certificates for in-door licenses, the discretion is absolute and without appeal.

As to renewals of the in-door beer licenses for houses consented since 1869, the justices are still bound to observe the rules above specified if they refuse such licenses, see *post*. And there is always an appeal to quarter sessions against refusal to renew or transfer any license.

Persons disqualified from acting are described in the Licensing Act, section 60.

The manner in which certificates are transferred is the same as in the rules: 9 Geo. 4, c. 61, ss. 4, 14; 5 & 6 Vict. c. 44; 33 & 34 Vict. c. 4, sub-sect. (5).

Renewal of certificates, see 32 & 33 Vict. c. 27, s. 19; and Act, 1872, section 42.

Any person aggrieved by any act of the justices, except as respects the refusal of a new certificate, may appeal to the next general or quarter sessions of the peace holden for the county: see 9 Geo. 4, c. 61, *ante*, p. 210. Hence a party whose certificate the justices refused once appeal to the quarter sessions, because this 8th & 34 Vict. c. 29, s. 4, then incorporated all the sections of the Act, relating to such appeals: *R. v. Smith or Southport JJ.*, 10 L. J. 400; 37 J. P. 214; 28 L. T. 129; 42 L. J. M. C. 146; 10 L. J. 400. And the Licensing Act, 1874, section 27, *ante*, p. 179, incorporated such of these incorporated enactments as related to new certificates, saving the appeal section in full force as regards renewals. If the refusal be by the justices of a quarter sessions then sitting in the Municipal Corporations Act, 1882, the appeal must be made to the quarter sessions of the county, and not the recorder: see 51, s. 27, *ante*, p. 210, and cases cited. If the court of quarter sessions grant the certificate which the justices refused, the effect is the same as from the date of its having been refused: 9 Geo. 4,

If the justices refuse to renew a license, and the applicant appeals to the quarter sessions, which court reverses the decision at special sessions, the justices of special sessions do not appear to support the decision, or the decision is reversed, see 9 Geo. 4, c. 61, s. 29, *ante*, the costs.

Appndx. 9. (a) As to *transfer of certificates*. *Repealed* by 33 & 34 Vict. c. 29, s. 4.

10. As to *renewal of licenses in force in Middlesex & Surrey (spent)*.

11. *Penalty on forgery of certificate.*] If any person or tender, knowing the same to have been forged, any certificate authorised to be granted by this Act, he shall, on summary conviction before two or more justices, be liable to a penalty exceeding twenty pounds, or, in the discretion of the justice before whom he is tried, to imprisonment for any period exceeding six months, with or without hard labour. Any license granted in pursuance of such forged certificate shall be void, any person making use of such forged certificate, knowing the same to have been forged, shall be disqualified from obtaining any time thereafter a license for the sale of beer, cider, or wine by retail under any of the said recited Acts.(b)

12. Constables may *enter houses*. *Repealed* by Licensing Act, 1872. See Schedule, and section 35.

13. Proof of sale. *Repealed* by Licensing Act, 1872. Schedule, and section 62.

14. Sale on *neighbouring premises*. *Repealed* by Licensing Act, 1872. See Schedule, and section 6.

15. Beer or cider drunk at *illegal times*. *Repealed* by Licensing Act, 1872. Schedule, and see Licensing Act, sections 3, 9.

16. Houses open at *illegal hours*. *Repealed* by Licensing Act, 1872. See Schedule, and section 25.

(a) This section has been repealed by 33 & 34 Vict. c. 29, s. 4, now transfers of certificates are put on the same footing as transfers of licenses under the Alehouse Act, 9 Geo. 4, c. 61, ss. 4, 14. See 33 & 34 Vict. c. 29, s. 4, sub-sect. 5, *post*, and notes.

(b) By this section any person knowingly making use of a forged certificate is disqualified for life from obtaining a license, whether the same kind or not. See as to disqualifications, Licensing Act, s. 3, *ante*, p. 5.

There being nothing said in this Act as to the application of the provisions of 11 & 12 Vict. c. 43, s. 19, *ante*, p. 5, they apply to the penalties under this section.

second or third offence.(c) *Repealed* by Licensing Act, Appndx.
Schedule.

of table-beer. *Repealed* by Licensing Act, 1872.
ile.

*isting in-door licenses to be renewed, except in
ses.]* Where, on the 1st of May, one thousand eight
nd sixty-nine, a license under any of the said recited
orce [and has been renewed from time to time, whether
e same person or not; 33 & 34 Vict. c. 29, s. 7] with
ny house or shop for the sale by retail therein of beer,
ine to be consumed on the premises, it shall not be
the justices to refuse an application for a certificate for
beer, cider, or wine to be consumed on the premises
of such house or shop, except upon one or more of the
pon which an application for a certificate under this
ect of a license for the sale of beer, cider, or wine not
imed on the premises, may be refused, in accordance
Act.(d)

mode of reckoning a second offence under this repealed
Ex parte Short, L. R. 5 Q. B. 174; 39 L. J. M. C. 63; 22
4 J. P. 599.

Licensing Act, 1872 (Schedule), has repealed "so much of
as relates to offences." This was somewhat ambiguous,
y the result was to strike out the rest of this section, which
has been omitted.

ion was altered as shown in the text by 33 & 34 Vict.

ion has not been affected by the recent Acts, 43 Vict. c. 6;
ct. c. 34, having been probably overlooked, so that though
g justices have now an absolute discretion to refuse all
or and all out-door beer licenses, either new or old, they are
the four grounds specified in section 8 as to in-door beer
ich have been continuous since 1869. It has been decided
ht to renew a license under this section must apply only to
ind of liquor. Thus, if a license for beer only has since
held, he cannot demand to have a license on the same terms
cider or wine, the words being read distributively: *R. v.*
Manchester JJ., 20 Q. B. D. 430; 52 J. P. 164; 57 L. J.
58 L. T. 607; 36 W. R. 600.

It of the enactments as to renewal of certificates under the
Beerhouse Acts seems to be as follows:—

g of certificates.—Where the certificate is for a license to
il wine or spirits, or sweets, or cider, *not to be consumed on*
es, then the justices cannot refuse the renewal, whether the

Appndx. 20. *Nothing to affect privileges and rights then named.]* Nothing in this Act shall be deemed to affect—

- (1) The privileges heretofore enjoyed by any university in England, or the chancellor, masters, and scholars of the same, or their successors :

license existed in 1869 or not, except upon one of the grounds stated in 32 & 33 Vict. c. 27, s. 8, and as to the last ground, it is in such a case inapplicable, except as to cider. And he need not now give affirmative evidence of good character, for he has a right to rely on the expectation that nobody will oppose him on that or any other ground, unless he has got seven days' notice of some objection and the grounds thereof. This seven days' notice of opposition is a condition precedent to refusing any renewal license. If the justices refuse on the ground that the evidence as to good character is defective, the party may appeal to quarter sessions, and then give further and better evidence of good character, and if the quarter sessions are satisfied of the good character they are bound to reverse the judgment and grant the renewal: *1 Pilgrim*, 35 J. P. 169; L. R. 6 Q. B. 89; 40 L. J. M. C. 3; 23 L. R. 410; 19 W. R. 99. And there is the same right whatever may have been the ground of refusal to give additional evidence at quarter sessions. The renewal will take effect from the date of the previous refusal. If the justices refuse to renew a certificate there is always an appeal to quarter sessions. See notes to section 8, *ante*, p. 283.

Renewing on-certificates.] If the application is for renewal of a certificate for beer, cider, or wine, to be consumed on the premises, the justices may refuse the renewal, as they may do with respect to a publican's license, without stating reasons, unless in case of a house licensed for beer, wine, or cider on 1st May, 1869. But in this as in all cases the renewal can only be refused if notice of opposition has been previously given. The license must have been continuous, for if there has been forfeiture by the misconduct of an occupier at any time, or the license has been for any cause not renewed for a year, the next application to be deemed an application for a new certificate so far as regards grounds for refusal of the certificate: *R. v. West Riding JJ.*, Q. B. D. 258; 52 J. P. 455; 57 L. J. M. C. 103; 36 W. R. 400; *Hargraves v. Dawson*, 35 J. P. 342; 24 L. T. 428; *R. v. Curzon*, L. J. M. C. 155; L. R. 8 Q. B. 400; 37 J. P. 774; 29 L. T. 21; 21 W. R. 886. If the house was licensed on 1st May, 1869, and has been since licensed continuously, and the justices had not made an order under this 32 & 33 Vict. c. 27, s. 19, which, under the repealed part of the section, took away the protection of such continuing license, then the justices cannot refuse to renew the certificate, except on one of the four grounds set forth in 32 & 33 Vict. c. 27, s. 8; 34 Vict. c. 29, s. 7; and the appeal to quarter sessions, for not renewing a certificate, remains as before.

In *R. v. Curzon*, *supra*, a beerhouse license was in force in 1

privileges heretofore enjoyed by the masters, wardens, brethren, and commonalty of the vintners of the city of London, except as to those freemen of the said city who have obtained their freedom by redemption only : (a)

Appndx.
—

privileges heretofore enjoyed by the mayor or burgoesses of the city of St. Albans in the county of Hertford, their successors :

right of any person who is duly authorised by justices of the peace to keep a common inn, alehouse, or victualling house to take out any excise license :

grant of any occasional license, or the power of any person duly authorised by the excise to sell beer, spirits, or wine at any fair or public races.

to repeal of Acts set forth in second schedule. *Re-6 & 47 Vict. c. 39.*

as tenant had not renewed his license for three years owing to the rebuilding of his premises. When they were rebuilt he applied for a new certificate. Held, that justices had a discretion to grant a license though not on the four grounds, as it was a new

Graves v. Dawson, supra, and *R. v. West Riding JJ., supra*, as the license had been continuous since 1869, but the license holder's license, so that it ceased to exist, and the justices were right in deciding that the next application could only be one for a new license.

grant of a certificate may in future (that is after 1872) be made on the certificate : Licensing Act, 1872, section

notes to Licensing Act, 1872, sections 42 and 74, *ante*,

as to exceptions to the Act as to the universities and vintners of London are the same as specified in 9 Geo. 4, c. 61, s. 36. Licensing Act, 1872 section 72. As to fairs and races, see Act, 1874, section 18.

Appndx.

FIRST SCHEDULE.

(Superseded by the Licensing Act, 1872, section 43.)

SECOND SCHEDULE.

[This schedule was *repealed* by 46 & 47 Vict. c. 39, but is retained in order to show how it disposed of some of the prior enactments by repealing them. The extent of repeal follows each statute respectively.]

11 Geo. 4 and 1 Will. 4, c. 64 : So much of section 2 as required the grant of an excise license under the provisions of the Act to be made within ten days after the application has been made for the same.

4 & 5 Will. 4, c. 85 : Sections 2, 3, 8, and 9.

3 & 4 Vict. c. 61 ; Sections 2, 3 ; so much of section 4 as enacts that in any extra-parochial place or places where no rates are made or collected for the relief of the poor a person applying for a license shall produce to and deposit and leave with the proper officer of excise granting such license a certificate in writing, signed by two inhabitant householders of the township or place, certifying that the party applying is the real resident in, and occupier of the dwelling-house sought to be licensed, and also certifying the true and real annual value of the same with the premises occupied therewith, according to the best of their judgment and belief ; sections 5 and 6.

23 Vict. c. 27 : Sections 13, 14, and 15.

24 & 25 Vict. c. 21 : So much of section three as renders it unnecessary that the person applying for a license shall produce any certificate.

THE WINE AND BEERHOUSE ACT AMENDMENT ACT (1870).

33 & 34 VICT. CAP. 29.

AN ACT to amend and continue the Wine and Beerhouse Act, 1869. [14th July, 1870.]

BE it enacted, &c., as follows :—

1. *Short title.*] This Act may be cited as “The Wine and Beerhouse Act Amendment Act, 1870.”

2. *Extent of Act.*] This Act shall not extend to Scotland or Ireland.

3. *Interpretation of terms.*] In this Act the words “the principal Act,” mean the Wine and Beerhouse Act, 1869, and the word “sweets” includes sweets, made wines, mead, and metheglin.

*Amendment of provisions of principal Act as to grants, Appndx.
itions, and transmissions of certificate.]* The provisions
he principal Act, with reference to the grant, duration, and
mission of certificates, shall be amended as follows (that is to
—

-) The seventh section of the principal Act shall be read as if for the words "constable or peace officer acting within such parish, township, or place," there were substituted the words "the superintendent of police of the district," and the notice required by that section to be given to any overseer or constable may be served by a registered letter through the post: (a)
-) Where a certificate is now required to be signed by a majority of justices, it shall be sufficient if, instead of such signature, the concurrence of such majority be signified by means of an impression from an official seal or stamp, in such form as the justices may direct, affixed in the presence of the justices in sessions assembled, and verified in the case of each certificate by the signature of their clerk. Any seal purporting to be so affixed and verified shall be received in evidence without further proof; and if any unauthorised person imitate or affix an impression of such seal on any certificate or imitation of a certificate, or knowingly use a certificate or imitation of a certificate falsely purporting to be sealed in pursuance of this section, he shall be guilty of forgery: (b)
-) For every certificate granted by way of renewal under the principal Act or this Act, there shall be payable to the clerk of the justices the sum of four shillings for all matters to be done by such clerk, and one shilling for the constable or officer for service of notices; and if any clerk of justices demand or receive any greater or further

) See 32 & 33 Vict. c. 27, s. 7, *ante*, p. 277, where the alteration directed is made in that section. See also Licensing Act, 1872, s. 40, *ante*, p. 71.

) The *form of certificate* has been settled by the Secretary of under the Licensing Act, 1872, section 48. See the forms at the f this volume.

e certificate may be stamped by an official stamp as here directed. clerk must sign the certificate if so stamped, and the stamp must ixed in presence of the justices or licensing committee.

is mode of official stamping has also been made applicable to use licenses granted by justices: Licensing Act, 1872, section 40, p. 72.

Appndx.

fee or payment in respect of any such renewal, whether for himself or for any other officer or person, he shall, upon summary conviction, be liable to a penalty of 10 pounds:(a)

- (4) It shall be in the discretion of the justices to whom application for a transfer is made, either to allow or to refuse the application, or to adjourn the consideration thereof:(b)

- (5) [The proviso of the fifth section of the principal Act shall be repealed and] Subject to the provisions of this section, all provisions of the Act of the ninth year of George Fourth, chapter sixty-one, and Acts amending the same relating to the time for which justices' licenses are in force, and relating to the fees payable for such licenses, and relating to the transfer, removal (*sic*), transmission of such licenses, and the grant of licenses upon assignment, death, change of occupancy, or contingency, and relating to copies of such licenses, relating to grants or transfers of such licenses, with the attendance of any applicant who is hindered by illness, infirmity, or other reasonable causes shall have effect with regard to certificates granted or to be granted under the principal Act and this Act.(c)

(a) See, as to fees for grant and transfer of certificate, 32 & 33 c. 27, s. 8, notes; also 9 Geo. 4, c. 61, s. 15, *ante*, p. 208.

(b) The application for a transfer is made under 9 Geo. 4, ss. 4, 14, and 5 & 6 Vict. c. 44. See next sub-section.

See as to adjournment of the application for grant or renewal of certificate, 32 & 33 Vict. c. 27, s. 5, and notes; also this statute section 11.

This enactment must be understood to apply to the justices in petty sessions sitting under 9 Geo. 4, c. 61, s. 4, and not to the justices in petty sessions sitting under 5 & 6 Vict. c. 44. And the enactment does not seem to apply to transfers of alehouse licenses.

This enactment does not give the justices an absolute discretion to refuse all applications for transfer of wine, spirit, cider, and off-licenses and in-door beer, cider, and wine licenses continued in 1869, and is not inconsistent with the 8th and 19th sections of 3 Vict. c. 27. The words "in the discretion of the justices" do not mean an absolute discretion as regards the four grounds of refusal which are applicable, for in applications for transfer the justices have the same limited discretion as they would have had on a renewal: *monds v. Blackheath JJ.*, 17 Q. B. D. 765; 50 J. P. 742; 55 L. J. 166; 35 W. R. 167.

(c) The words within *brackets* were repealed by 46 & 47 Vict. Sched.

vision as to *convictions*. *Repealed* by Licensing Act, 1872. **Appendx.**
rule.

actment now modifies the enactment of the former Act Vict. c. 27, s. 6), which declared the certificate to be in force year from the date of its being granted, no matter at what the year it was granted. The 9 Geo. 4, c. 61, s. 13, which has been incorporated into this Act, and must now override the principles of Middlesex and Surrey the certificate will be in force from the fifth day of April, and in other counties the certificate will be in force from the tenth day of October, after the granting thereof, whole year thence respectively next ensuing and no longer."

of certificates.] The transfer of certificates is now regulated by the provisions of the Alehouse Act (9 Geo. 4, c. 61, s. 14), as amended, for all the provisions of that Act relating to transfers are contained in this Act.

before transfer.] The notice before transfer is now regulated by the Licensing Act, 1872, section 40.

of justices as to transfer and right of appeal.] The justices have a discretion either to allow or refuse the application for a license, or to adjourn the consideration thereof (see this Act, section 4, s. 4, *ante*, p. 290). If refused, there is an appeal to quarter sessions (9 Geo. 4, c. 61, s. 27), for one of the leading provisions of the Act, s. 4, c. 61, relating to the transfer, &c., of licenses, is that it gives the right of appeal. This section in effect imports into all the provisions of the Act 32 & 33 Vict. c. 27, as well as the whole parts of 9 Geo. 4, c. 61, relating to the grant, duration, and removal of certificates. The word "removal" in this sub-section is a misprint for "renewal." The justices must accordingly exercise themselves in dealing with out-door wine, spirit, sweets, and ales and all the in-door certificates dated from 1869 to the four specified in 32 & 33 Vict. c. 27, ss. 8, 19, when those enactments

transfer.] The fees are the same as upon grant of a certificate, *ante*, p. 282.

of granting transfer of certificates.] The special sessions for transferring alehouse licenses are the times for applying for transfer of certificates under this Act. (9 Geo. 4, c. 61, s. 4.) & 6 Vict. c. 44, s. 1, the justices in petty sessions may by notice on any certificate continue it in force until the then next special session for transferring licenses and no longer.

bankruptcy, &c., of certificate holder.] This section extends the provisions of 9 Geo. 4, c. 61, s. 14, to the case of certificates in like cases, and the provision as to death of license holder is also contained in Licensing Act, 1872, section 3, *ante*, p. 3.

Appndx.— 6. Provision as to certain offences. *Repealed by Licensing Act, 1872.* See Schedule.

7. *Provision as to existing licenses.*] The nineteenth section of the principal Act shall extend to licenses granted by way of renewal from time to time of licenses in force on the first of May, one thousand eight hundred and sixty-nine, whether such licenses continue to be held by the same person or have been transferred to any other person or persons. [The section was *repealed* by Licensing Act, 1872, Schedule.(a)]

8. Regulation as to closing, &c. *Repealed by Licensing Act, 1872.* See Schedule.

9. Avoidance of licenses. *Repealed by Licensing Act, 1872.* See Schedule.

10. *As to beer dealers' additional retail license.*] A certificate for an additional license to the holder of a strong beer dealer's license to retail beer under the provisions of the two sixth and twenty-seventh years of the reign of Her Majesty Victoria, chapter thirty-three, shall not, after the passing of this Act, be granted, except by way of renewal from time to time of a certificate in force at the time of the passing of this Act, be granted, upon the like proof of qualification according to rating, as is required in the case of licenses to retail beer for consumption on the premises under the provisions of the Acts recited in the principal Act for permitting the general sale of beer and cider for retail in England.(b)

Personal application for certificate and transfer.] The provisions of 9 Geo. 4, c. 61, s. 12, dispense with personal application to the justices in some cases, and are here extended to certificates. In the case of renewal of certificates also, the applicant need not attend unless required by the Licensing Act, 1872, section 42, *ante*, p. 75; Licensing Act, 1872, section 26, *ante*, p. 178.

Lost certificates.] When it is proved to the justices or magistrate upon an application to transfer, &c., the certificate, that such certificate has been lost or mislaid, such justices or magistrate may receive a new certificate, &c.: 5 & 6 Vict. c. 44, s. 2, *ante*, p. 238. A new certificate may be done in cases where the certificate has been wilfully held by the holder: Licensing Act, 1872, section 41, *ante*, p. 74. Every such certified copy, and every such endorsement a fee of 1s. and no more, shall be taken: 5 & 6 Vict. c. 44, s. 3.

(a) See 32 & 33 Vict. c. 27, s. 19, and notes, *ante*, p. 285.

(b) This section prevented any more certificates from being granted.

wer to justices to postpone applications for grants Appndx.

ls.] Where any applicant for the grant or renewal of the has, through inadvertence or misadventure, failed with any of the preliminary requirements of the Act or this Act, or any Act incorporated therewith, as may, if they shall so think fit, and upon such terms ink proper, postpone the consideration of the application adjourned meeting, and if at such adjourned meeting as shall be satisfied that such terms have been complied may proceed to grant or withhold such certificate as if nary requirements of the principal Act had been with.(c)

alers under 26 & 27 Vict. c. 33, *ante*, p. 263, to sell beer by the house be of the same valuation qualification as required Beerhouse Acts. See notes to section 8 of 32 & 33 Vict. Licensing Act, 1872, ss. 45, 46, 47, also 3 & 4 Vict. c. 61, l. 1. An exception, however, is made as to houses in respect certificate was in force on the 14th July, 1870; and these under the old law, that is to say, no valuation or rating on was necessary. But these certificates cannot now be at any special transfer sessions, for the Licensing Act, 1874, was repealed by 43 Vict. c. 6, s. 2, *post*.

s section must be taken to extend and alter the provisions of use Act, 9 Geo. 4, c. 61, so far as respects applications for . By that Act the justices were bound to appoint the nual licensing meeting in Middlesex and Surrey for one of n days of March, and in every other county for some day th of August and 14th of September, and the adjournment also restricted to March, in Middlesex and Surrey, and to : September in every other county. It was held, in *R. v. ing of Yorkshire JJ.*, L. R. 5 Q. B. 33; 34 J. P. 4; 39 J. 17; 10 B. & S. 840; 21 L. T. 490; 18 W. R. 259, that s might and ought to arrange the adjournment days so as to e who were not in time with their notices for the general ensing day to give these notices in time for the adjournment is section enables the justices to adjourn an adjourned meet- l as the general annual meeting, and they may do so to a day : respective months of March, in Middlesex and Surrey, and : and September in other counties, "if the applicant has, advertence or misadventure, failed to comply with the Act." ljoined meeting here contemplated is distinct from the adjournments mentioned in 9 Geo. 4, c. 61, the business will ely in disposing of cases entertained at the meeting which is ned, and the notices as to adjourned meetings required by c. 61, s. 5, would not be necessary.

ve section does not apply to applications for transfers of : which are already similarly treated by section 4, sub-section 4,

Appndx. 12. Limit of mitigation of penalties. *Repealed by Licen*
 — Act, 1872. See Schedule.

13. Houses licensed to retail *sweets*. *Repealed by Licen*
 Act, 1872. See Schedule.

14. *Persons convicted of felony disqualified from se*
spirits by retail.] Every person convicted of felony shall
 ever be disqualified from selling spirits by retail, and no li
 to sell spirits by retail shall be granted to any person who
 have been so convicted as aforesaid; and if any person
 after having been so convicted as aforesaid, take out or hav
 license to sell spirits by retail, the same shall be void t
 intents and purposes; and every person who, after bei
 convicted as aforesaid, shall sell any spirit by retail in
 manner whatever shall incur the penalty for doing so with
 license.(a)

15. Visitation of suspected houses. *Repealed by Lic*
 Act, 1872. See Schedule.

ante; nor does it apply to applications for the grant or rene
 alehouse licenses under 9 Geo. 4, c. 61, in like circumstances
 there seems nothing to prevent justices at a general annual m
 adjourning an application for an alehouse license in a
 manner.

(a) Where T. had been convicted of felony in 1865 and sen
 to three months' imprisonment, and in 1873 obtained by trans
 existing license which in September, 1873, was renewed at the
 annual licensing meeting, and the previous conviction for felo
 discovered in November, 1873, whereupon T. sought to trans
 license to V., the justices refused to transfer on the ground that the
 in T.'s hands was utterly void. The court held the justices were
 for this enactment had a retrospective effect: *R. v. Vine; Vine v.*
JJ., L. R. 10 Q. B. 196; 39 J. P. 213; 44 L. J. M. C. 60; 31
 842; 23 W. R. 649. There is a similar disqualification
 beer and cider under the Beerhouse Acts, 3 & 4 Vict. c. 61, s.
 and in respect of wine under 23 Vict. c. 27, s. 22. See also *Lic*
 Act, 1874, section 15 as to a remedy for the owner. The owne
 appeal under this last section against a refusal to transfer after a
 has been committed: *R. v. West Riding JJ.*, 11 Q. B. D. 41
 L. J. M. C. 99; 48 J. P. 149. But it seems he must follow the r
 given by Act, 1874, section 15, literally, as it is said to be the
 remedy: *Stevens v. Sharnbrook JJ.*, 53 J. P. 423. See *ante*, p. 1

section 6 of 5 Geo. 4, c. 54, s. 2, of 6 Geo. 4, c. 81, and Appndx. of 13 & 14 Vict. c. 67, so far as relates to brewers' retail repealed. *Repealed* by 46 & 47 Vict. c. 39. See

duration of the principal Act and of this Act. *Repealed* by 1872. See Schedule.

33 & 34 VICT. CAP. 111.

To make provision in relation to certain Beer-houses not duly qualified according to law.

[10th August, 1870.]

As in misapprehension of the provisions of an Act, 3 & 4 Vict. c. 11, licenses and certificates for the sale of beer and cider were granted in respect of houses not duly qualified as by section 1 of the said Act is required :

enacted, &c., as follows :—

Rating qualification and closing hours of beerhouses in townships where separate poor rate is or can be made.

A dwelling-house, if situate within a township for which a separate poor rate is or can be made, or within a hamlet for which a separate poor rate is or can be made, shall, for the purpose of determining by reference to population, in accordance with the first section respectively of the said Act, the rating of such house as a house for the sale of beer or cider, be deemed to be such township or hamlet, as the case may be, and in any larger area of which such township or hamlet is comprised. (b)

Restricted application of Act.] This Act shall apply only to houses in respect of which licenses under Acts relating to the general sale of beer and cider by retail in England are in force at the time of the passing of this Act, and to such houses only as such licenses or any renewal thereof shall remain in force.

Short title.] This Act may be cited for all purposes as the Beerhouse Act, 1870."(c)

Some words omitted, being repealed by the 46 & 47 Vict. c. 39,

Rating qualification, and hours of closing of beerhouses.] This Act was passed at the end of the session of Parliament, 1870, in

Appndx.

41 & 42 VICT. CAP. 38.

AN ACT for the further relief of Innkeepers.(a)

[8th August, 1878.]

WHEREAS it is just and expedient to give, in addition to the present right of lien, a power of sale under certain circumstances to keepers of hotels, inns, and licensed public-houses upon and in respect of goods and chattels deposited with them or upon the tenements and premises occupied by them:

Be it therefore enacted, &c., as follows; that is to say,—

1. *Landlord, &c., may dispose of goods left with him after six weeks.*] The landlord, proprietor, keeper, or manager of any hotel, inn, or licensed public-house shall, in addition to his ordinary lien, have the right absolutely to sell and dispose by public auction of any goods, chattels, carriages, horses, wares, or

order to correct what was considered an anomaly caused by the then recent decision of *Preston*, app., v. *Buckley*, resp., L. R. 5 Q. B. 391; 34 J. P. 372; 39 L. J. M. C. 105; 22 L. T. 653; 18 W. R. 1104. That decision was to the effect that where a parish consisted of townships, if the parish contained the amount of population specified in the Act 3 & 4 Vict. c. 61, ss. 1, 15, it was immaterial whether the particular township in which the beerhouse was situated contained the required amount of population: in short, that the population of the parish, and not of the township, governed the hours of closing the beerhouse. The Beerhouse Act, 1870 (which is, however, confined entirely to beerhouses for which a license was in force on 10th August, 1870, or for which such license has been renewed), alters the law, and now makes the township or hamlet, instead of the parish, the area of population, so as to govern the qualification in point of rating or annual value, provided such township or hamlet has or may have a separate poor rate. If a separate poor rate cannot be made for the hamlet, then the law remains unaffected by this Act, and the population of the parish will (if not situate in a city, borough, or cinque port) still be the criterion for the hours of closing. It is to be observed, also, that this Act is confined to those beerhouses which had a license on 10th August, 1870, or which have since obtained a renewed license. Hence, if any new certificate has been granted since 10th August, 1870, the above Act will not apply, and the house will be subject to the Act 3 & 4 Vict. c. 61, as construed by *Preston v. Buckley* (*supra*), and as modified by Licensing Act, 1872, sections 46, 47.

(a) See the previous Act as to the liability of innkeepers, 26 & 27 Vict. c. 41, *ante*, p. 265.

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—

ndise which may have been deposited with him or left in
se he keeps, or in the coach-house, stable, stable-yard, or
remises appurtenant or belonging thereunto, where the
depositing or leaving such goods, chattels, carriages, horses,
or merchandise shall be or become indebted to the said
per either for any board or lodging or for the keep and
s of any horse or other animals left with or standing at
n the stables or fields occupied by such innkeeper.

ided that no such sale shall be made until after the said
hattels, carriages, horses, wares, or merchandise shall have
r the space of *six weeks* in such charge or custody or in or
ch premises without such debt having been paid or satis-
d that such innkeeper, after having, out of the proceeds of
le, paid himself the amount of any such debt, together
e costs and expenses of such sale, shall, on demand, pay to
son depositing or leaving any such goods, chattels, car-
horses, wares, or merchandise the surplus (if any) remain-
er such sale: Provided further, that the debt for the
it of which a sale is made shall not be any other or greater
an the debt for which the goods or other articles could
en retained by the innkeeper under his lien.

ided also, that at least *one month* before any such sale the
l, proprietor, keeper, or manager shall cause to be inserted
London newspaper and one country newspaper circulating
district where such goods, chattels, carriages, horses, wares,
handise, or some of them, shall have been deposited or
advertisement containing notice of such intened sale, and
shortly a description of the goods and chattels intended to
, together with the name of the owner or person who
d or left the same where known.(b)

[*short title.*] This Act may be cited as the Innkeepers
78.

he innkeeper's lien at common law extends over such goods as
eller usually takes with him, as bags, trunks, carriage, and
Turrell v. Crawley, 13 Q. B. 197; 18 L. J. Q. B. 155; *Smith
love*, 6 C. B. 132; 17 L. J. C. P. 219; *Allen v. Smith*, 12 C. B.
18; 31 L. J. C. P. 306; 6 L. T. 459; 11 W. R. 440. And if he
ses the lien extends to the horses: *Mulliner v. Florence*, 3
. 484; 47 L. J. Q. B. 700; 38 L. T. 167; 42 J. P. 293; 26
85.

lien exists though the goods may be the property of a third
Snead v. Watkins, 1 C. B. (N.S.) 267; 26 L. J. C. P. 57; 21
3; *Threlfall v. Borwick*, L. R. 10 Q. B. 310; 39 J. P. 409; 44
B. 87; 32 L. T. 32.

Appndx.

BEER DEALERS RETAIL LICENSES ACT, 18

43 VICT. CAP. 6.

AN ACT for amending the Law relating to the grant of Justices of Certificates for Beer Dealers Retail Licenses
[19th March, 1880.]

WHEREAS by the enactments described in the schedule to this provision is now made for the holder of a strong beer or wholesale excise license obtaining, on a certificate granted by justices, an additional license for the sale of beer by retail consumption off the premises, and it is expedient that justice should be at liberty to exercise their discretion respecting the grant of such certificates, as they are in respect of their certificates for licenses for sale of beer to be consumed on the premises

The lien does not, however, extend to a piano hired by the guest from a stranger: *Broadwood v. Granara*, 10 Ex. 407; 19 J. 24 L. J. Ex. 1.

The lien does not affect the person of the guest and clothes carried by him: *Sunbolf v. Alford*, 3 M. & W. 248.

At common law, though the innkeeper could detain the horse or carriage of the guest under his lien, yet he could not use these: *Brook v. Griffith*, Moor. 876; *Robinson v. Walter*, 3 Bulst. 270 could the innkeeper sell the horse: *Jones v. Thurloe*, 8 Mod. 171; 556; *Robinson v. Walter*, 3 Bulst. 270.

The fact of the innkeeper taking security from the guest for the amount incurred is no waiver of the lien: *Angus v. MacLachlan*, 23 330; 52 L. J. Ch. 587; 48 L. T. 863; 31 W. R. 641.

An innkeeper is not bound to receive and entertain a traveller, and, on request, give no security to pay his bill: *Fell v. Knapp*, 3 M. & W. 276; nor if he come with a dog which causes reasonable annoyance to inmates and visitors: *R v. Rymer*, 2 Q. B. D. 136; 46 L. J. 108; 41 J. P. 199; 25 W. R. 415; 35 L. T. 774.

The lien arises by virtue of the innkeeper holding himself out to receive all travellers, and hence those who do not so hold themselves out have no such lien, but merely contract to give to persons who select certain accommodation, such as boarding-house keepers: *R v. Richardson*, 3 E. & B. 144; 23 L. J. Q. B. 217; *Holder v. Holder*, 8 C. B. (N.S.) 254; 29 L. J. C. P. 246; 8 W. R. 438; or coffee or tavern keepers, or victualling-house keepers: *Thompson v. Thompson*, 3 B. & Ald. 286; or restaurant keepers: *R v. Rymer*, *supra*.

h certificates should be granted at the general annual **Appndx.**
meeting of justices, and not at any other time :

therefore enacted, &c., as follows :

*Justices to have discretion as to licenses for consump-
beer off the premises, 32 & 33 Vict. c. 27.]* Section
the Wine and Beerhouse Act, 1869, is hereby repealed, so
the qualification therein contained relates to grants of
tes for such additional licenses as aforesaid ; and the
justices shall be at liberty either to refuse such certificates
aid on any grounds appearing to them in the exercise of
cretion sufficient, or to grant the same to such persons as
the execution of their statutory powers, and in the exercise
discretion, deem fit and proper.(a)

he effect of this section was to strike out the beer dealers retail
e from the list of licenses as to which the licensing justices
y a limited power of refusal. The four grounds of refusal
in 32 & 33 Vict. c. 27, s. 8, formed an exception to the original
ion first given in dealing with publicans' licenses, as to which
s always an absolute discretion under 9 Geo. 4, c. 61. The Act
, c. 61, was made, in 1869, to apply to beerhouse licenses, but
ect to the four restrictions mentioned. When the exception
struck out, the original absolute discretion was at once restored.
e effect shortly stated of this section was to give to the licensing
recisely the same absolute discretion which they always have had
Geo. 4, c. 61, to deal with alehouse or publicans' licenses. That
the justices can at discretion and without being obliged to state
on, refuse to grant an additional retail license to beer dealers.

recisely the same absolute discretion was vested in the justices
aling with *renewals* of these beer dealers' retail licenses, for
Geo. 4, c. 61, the justices always had, and still have, the same
discretion in dealing with renewals as with grants of public-
ences. The only qualification is, that before refusing a renewal
ces must now in all cases comply with the Licensing Act, 1872,
Vict. c. 94, s. 42, and the Licensing Act, 1874, 37 & 38 Vict.
6, to this extent, that they are to see that no renewal is refused
irst taking care that notice and an opportunity have been given
ensed person to answer and obviate, if he can, all objections
R. v. Justices of Essex, 46 J. P. 761 ; *R. v. Merthyr Tydvil*
J. P. 213 ; 54 L. J. M. C. 78 ; 14 Q. B. D. 584. And see Act
42, and notes, *ante*, p. 76. An in-door license for a beerhouse
d since 1869 is, however, still an exception, and cannot be
except for one of the four grounds : *R. v. King or Manchester*
Q. B. D. 430 ; 52 J. P. 164 ; 57 L. J. M. C. 20 ; 58 L. T. 607 ;
L. 600.

er distinction between the discretion of justices in refusing
nd in refusing renewals under this and the Act 9 Geo. 4, c. 61,
here is no *appeal* to quarter sessions in respect of the refusal
it, whereas there is always an appeal against the refusal of a

Appndx.

2. *Licenses at annual licensing meetings only*

Vict. c. 49.] Section thirty-one of the Licensing Act hereby repealed, as from and after the general annual meeting held in any licensing district next after the this Act; and thenceforth certificates for such additions as aforesaid shall be granted at general annual licensing and not at any other time. (a)

3. *Short title; extent; construction.* 35 & 36 *Vict.*

This Act may be cited as the Beer Dealers Retail Licenses Act, 1880, and shall not extend to Scotland or Ireland, and therein have the same meaning as in the Licensing Act, 1872.

SCHEDULE. (c)

ENACTMENTS RELATING TO BEER DEALERS RETAIL LICENSES

An Act for granting to Her Majesty certain duties of Inland Revenue, and to amend the laws relating to the Inland Revenue: 26 & 27 *Vict. c. 33* (section one).

The Wine and Beerhouse Act, 1869.—32 & 33 *Vict. c. 37*.

The Licensing Act, 1874.—37 & 38 *Vict. c. 49*.

renewal, as the Licensing Act, 1872, did not repeal the appeal section as regards renewals and transfers.

(a) This section repealed the exception which had been introduced by the Licensing Act, 1874, s. 31, of allowing the beer dealers additional retail licenses to be applied for at the special transfer sessions as well as at the general annual meeting. These were the only kind of new licenses that could be applied for at those intermediate sessions, and this additional advantage being now repealed, the result is that all new licenses to sell intoxicating liquors by retail, and all renewals, must be applied for at the general annual licensing meeting or its adjournment, and not at any other time.

(b) This Act is not declared to be read as one with the Intoxicating Liquor Licensing Acts. But as it professes only to alter one or two sections in those Acts, the effect is precisely the same owing to the words in this section.

This Act dealt exclusively with the beer dealers' additional retail license, which was an out-door license, and said nothing as to the two other kinds of retail licenses, namely, those granted under the Beer Act, 1 Will. 4, c. 64, and amending Acts, and the table-beer licenses granted under 24 & 25 *Vict. c. 21*, s. 8. This omission was now covered, and in 1882, those two other kinds of beer licenses were put on the same level as public-house licenses by the next Act of 41 *Vict. c. 34*, *post*, which is a supplement to the present Act.

(c) This Act did not affect the out-door wine licenses, which for stood on the same footing as off beer licenses, and still retain that for for they can still only be refused for one of the four grounds: *Scott*, 22 Q. B. D. 481; 53 J. P. 119; 58 L. J. M. C. 78; 60 Q. B. D. 231; 37 W. R. 301.

INLAND REVENUE ACT, 1880.

43 & 44 VICT. CAP. 20.

AN ACT to repeal the duties on Malt, to grant and alter certain duties of Inland Revenue, and to amend the Laws in relation to certain other duties.

[12th August, 1880.]

* * * * *

33. Provisions as to charge and payment of duty.]

(1) The commissioners may, when they think fit, require a brewer other than a brewer for sale to verify the entries in the register delivered to him by a declaration to be made by him before a justice of the peace or an authorised officer.

(2) The charge of duty shall be made, and the duty shall be paid, at such times as the commissioners shall appoint.

(3) Provided that if the annual value of the house occupied by a brewer does not exceed ten pounds, the beer brewed by him shall not be charged with duty.(d)

34. Beer brewed to be for domestic use.] (1) A brewer, other than a brewer for sale, shall only brew beer for his own domestic use, or for consumption by farm-labourers employed by him in the actual course of their labour or employment.

(2) The brewer shall only brew on premises occupied by him, or in case the brewer occupies a house of an annual value not exceeding ten pounds, on premises gratuitously lent to him by a brewer other than a brewer for sale.

(3) If the brewer contravenes either of the foregoing provisions of this section, or sells, or offers for sale, any beer brewed by him, he shall incur the penalty of ten pounds.

35. Power of entry.] Any officer may at all reasonable times enter and inspect any premises used for the purposes of brewing by a brewer other than a brewer for sale, and examine the vessels and utensils used by him for the purpose of brewing.

* * * * *

(d) It has been held that the brewer is exempt only if the house he brews in is under 10*l.* annual value, and he is not exempt merely if the house in which he brews is under that value: *Tippett v. Hart*, 10 B. D. 483; 47 J. P. 199; 52 L. J. M. C. 41.

Appndx. **40. Meaning of terms.]** For the purposes of this part of the Act, each of the following terms shall have the meaning as to it in this section :

“Cider” includes perry :

“Sweets” includes made wines, mead, and metheglin :

“Beer” includes cider : (a)

“Wine” includes sweets. (b)

41. Alteration of the duties on certain excise licenses.

On and after 1 July, 1880, in lieu of the duties of excise payable on the license mentioned in this section (except case of a license to sell wine by retail to be taken out by a person in Scotland), there shall be charged and paid the duties (c) following ; that is to say,

On a license to be taken out by a person for the selling of <i>cider</i> by retail in England	£ 1
On a license to be taken out by a retailer of <i>sweets</i> in the United Kingdom	1
On a license to be taken out by a person for the selling by retail in the United Kingdom of <i>beer</i> to be consumed on the premises	3
On a license to be taken out by a person for the selling by retail in England of <i>beer</i> not to be consumed on the premises	1
On a license (additional) to be taken out by a licensed dealer in <i>beer</i> in England or Ireland authorising him to sell by retail <i>beer</i> not to be consumed on the premises	1
On a license to be taken out to sell <i>wine</i> by retail to be consumed on the premises	3
On a license to be taken out by any person in England or Ireland for the sale by retail in any shop of <i>wine</i> not to be consumed on the premises	2

(a) Beer as used in this Act extends to any substitute for which on analysis contains more than 2 per cent. of proof 48 & 49 Vict. c. 51, s. 4.

(b) A license to dealers or retailers of foreign wine includes s 38 Vict. c. 23, s. 9.

(c) All these duties were in 1889 transferred to the county commissioners respectively, who have the same powers and duties as to levying and recovering the duties as the Commissioners of Inland Revenue : 5 Vict. c. 41, s. 20.

42. Duties on licenses for the retailing of beer and wine.] Appndx.

On and after 1 July, 1880, there shall be charged and paid on licenses for the sale by retail of beer and wine to be taken out by any person in the United Kingdom who may be authorised to obtain the same, the duties of excise following; (that is to say,)

	Duty.		
	£	s.	d.
a license for the sale by retail of <i>beer and wine</i> to be consumed on the premises - - - - -	4	0	0
a license for the sale by retail of <i>beer and wine</i> not to be consumed on the premises - - - - -	3	0	0

(2) Every such license shall be in such form as the commissioners shall direct, and shall expire in England or Ireland on the tenth day of October, and in Scotland on the fifteenth day of the year.

43. Alteration of duties on licenses to retailers of spirits.]

On and after 1 July, 1880, in lieu of the duties of excise now payable on licenses to be taken out by retailers of spirits in the United Kingdom, there shall be charged and paid the duties following; (that is to say,)

	Duty.		
	£	s.	d.
the annual value of the dwelling-house in which the retailer shall reside or retail <i>spirits</i> , together with the offices, courts, yards, and gardens therewith occupied, is under 10 <i>l.</i> - - - - -	4	10	0
10 <i>l.</i> and under 15 <i>l.</i> - - - - -	6	0	0
15 <i>l.</i> " 20 <i>l.</i> - - - - -	8	0	0
20 <i>l.</i> " 25 <i>l.</i> - - - - -	11	0	0
25 <i>l.</i> " 30 <i>l.</i> - - - - -	14	0	0
30 <i>l.</i> " 40 <i>l.</i> - - - - -	17	0	0
40 <i>l.</i> " 50 <i>l.</i> - - - - -	20	0	0
50 <i>l.</i> " 100 <i>l.</i> - - - - -	25	0	0
100 <i>l.</i> " 200 <i>l.</i> - - - - -	30	0	0
200 <i>l.</i> " 300 <i>l.</i> - - - - -	35	0	0
300 <i>l.</i> " 400 <i>l.</i> - - - - -	40	0	0
400 <i>l.</i> " 500 <i>l.</i> - - - - -	45	0	0
500 <i>l.</i> " 600 <i>l.</i> - - - - -	50	0	0
600 <i>l.</i> " 700 <i>l.</i> - - - - -	55	0	0
700 <i>l.</i> or above - - - - -	60	0	0

(3) The holder of a license to retail *spirits* chargeable with duty under this Act shall not be required to take out any further or other excise license to enable him to sell *beer or wine* by retail. The holder of such license shall not be liable for any percentage, discount, or other charge more than the amount stated in the Act.

Appndx.

— (3) Any person applying for a *six days' and early closing* for the sale of *spirits* as an auxiliary only to his business as a restaurateur or eating-house keeper, and not keeping a drinking bar, shall be entitled to his license at a sum not exceeding thirty pounds, no such reduction to be made unless the licensing justices shall have certified by indorsement on the certificate that the nature of the business carried on by the applicant justifies the reduced scale of charge.

(4) Where in the case of premises of the value of fifty pounds or upwards it shall be proved to the satisfaction of the licensing commissioners that the premises are structurally adapted for use as an inn or hotel for the reception of guests, and travellers dwelling therein, and are mainly so used, the amount of duty to be paid on a license to retail *spirits* shall not exceed twenty pounds. Provided that the relief under this sub-section shall not be given in case any portion of the premises is set apart as an ordinary public-house for the sale and consumption of liquors, and the annual value of such portion, in the opinion of the commissioners, exceeds twenty-five pounds.

(5) The amount of duty to be paid for a license to retail *spirits* in any theatre granted under the provisions contained in the Licensing Act, 1872, s. 7, shall not exceed twenty pounds. (a)

(6) The expression "retailer of spirits," as used in this section, does not include a spirit grocer in Ireland, as defined by section eighty-one of the Licensing Act, 1872, or a dealer in spirit *spirits* in bottle under an additional license authorising him to sell on behalf, or a grocer in Scotland as defined by section two of the Public Houses (Scotland) Act, 1853.

(7) In the case of premises in Ireland, the annual value on which the duty on the license in respect of the premises is charged, shall not exceed the amount of the value ascribed thereto in the valuation in force under the Act of the fifteenth and sixteenth years of Her Majesty's reign, chapter sixty-three, in the addition of twenty per centum of such amount; and any person licensed may appeal against the amount of annual duty upon which the duty has been charged and paid to the clerk of the sessions of the peace for the county, or the recorder of the city or borough in which the premises are situate, and the chairman or recorder shall have full power to hear and determine such appeal, and his determination shall be final. If, in accordance with such determination, there shall have been any overpayment of duty, the amount shall be repaid.

(a) See as to theatre licenses Act 1872, section 72 and not p. 125.

44. Extension of six-day and early closing licenses to the United Kingdom.] The provisions regarding six-day licenses and early closing licenses contained in section forty-nine of the Licensing Act, 1872, and sections seven and eight of the Licensing Act, 1874, shall be deemed to apply throughout the United Kingdom. *(b)* Appndx.

45. Duties on licenses for the sale of liquors and tobacco on boats.] (1) The duty now charged upon a license to supply, sell, and sell foreign wine, strong beer, cider, perry, spirituous liquors, and tobacco to passengers on board any *packet-boat* or other vessel employed for the carriage and conveyance of passengers, to be consumed in or on board such boat or vessel, shall be to be payable, and there shall be granted and paid the following duties of excise ; (that is to say,)

Upon a license to be taken out for the sale of spirits, wine, beer, and tobacco to be consumed on board a *boat* or vessel of any description employed for the carriage and conveyance of persons going as passengers from any place in the United Kingdom to any other place in the United Kingdom, or going from and returning to the same place on the same day,—

	Duty.		
	£	s.	d.
If the license is to be in force from the day of the date thereof until the thirty-first day of March next ensuing	-	-	5 0 0
If the license is to be in force for one day only	-	1	0 0

(2) Such licenses shall be granted under and be subject to the enactments contained in the Act 9 Geo. 4, c. 47, as amended by & 5 Will. 4, c. 75, s. 10, so far as such enactments are consistent with this Act and the terms of the licenses respectively.

Supplementary.

46. Powers and provisions to be applied to excise duties, drawbacks, and licenses under this Act.] The duties and drawbacks of excise charged and allowed by Parts II. and III. of this Act, and the licenses therein mentioned, shall be under the management of the Commissioners ; and all the powers, provisions, regulations and directions contained in any Act relating to excise duties, drawbacks, or licenses, or to penalties or forfeitures under excise Acts, and now or hereafter in force, shall respectively

(b) See as to these licenses, *ante*, pp. 88, 155, 156.

Appndx. — be of full force and effect with respect to the duties and backs charged and allowed by Parts I. and II. of this Act, the licenses therein mentioned, and the penalties and forfeitures imposed by this Act, so far as the same are applicable consistent with the provisions of this Act, as fully and effectually as if the same had been herein specially enacted with reference to the last-mentioned duties, drawbacks, licenses, penalties, and forfeitures respectively.

47. *Construction of term "excisable liquors" in license.]* The grant of a duty on beer by this Act shall be deemed to bring beer within the expression "excisable liquors" as contained in the Third Schedule in the Act 8 & 9 Vic.

48. *Saving rights under certain charters.]* No provision of this Act contained shall in anywise alter or affect the rights or privileges now existing under the charters of—

- (1) Any university in the United Kingdom, or
- (2) The master, wardens, freemen, and commonalty of the city of London, or
- (3) The mayor or burgesses of the borough of St. Albans in the county of Hertford.

SPIRITS ACT, 1880.

43 & 44 VICT. CAP. 24.

[26th August, 1880.]

96, 97. Retailers of spirits are subject to a penalty for interfering with the gauging of spirits and dipping-holes of casks, and must make entry with the excise of the place where they keep spirits.

101. A dealer or retailer must not carry on business on any premises communicating with a distiller's premises other than by an open public street or carriage road.

102, 103. A retailer must not, unless licensed as a wholesale seller, sell spirits to a retailer; nor keep an excess of spirits beyond a stock book.

104. The sale of spirits in less than two gallons or one dozen reputed quart bottles shall be deemed sale by

112, 113. Every retailer must keep a stock-book and certifi- **Appndx.**
 book.

126. A retailer of *methyated* spirits must make entry with the
 commissioners of the places where he keeps such spirits, and must
 have more than fifty gallons in possession at one time.

141. An officer of Inland Revenue may at any time enter and
 examine the stock of spirits of any dealer or retailer.

148. If any person receives, buys, or procures spirits from a
 person not having authority to sell, he shall incur a fine of 100l.

SUNDAY CLOSING (WALES) ACT, 1881.

44 & 45 VICT. CAP. 61.

**ACT to prohibit the Sale of Intoxicating Liquors on
 Sunday in Wales.** [27th August, 1881.]

WHEREAS the provisions in force against the sale of fermented
 and distilled liquors during certain hours of Sunday have been
 found to be attended with great public benefits, and it is expedient
 that the people of Wales are desirous that in the principality of
 Wales those provisions be extended to the other hours of Sunday:
Be it therefore enacted, &c., as follows:—

**1. Premises where intoxicating liquors sold to be closed
 Sundays in Wales.]** In the principality of Wales all pre-
 mises in which intoxicating liquors are sold or exposed for sale by
 retail shall be closed during the whole of Sunday.

2. Application of Licensing Acts.] The Licensing Acts,
 1835–1874, shall apply in the case of any premises closed under
 this Act as if they had been closed under those Acts.(a)

(a) These two sections taken together are somewhat obscure, owing
 to the words "as if they had been closed under those Acts." The
 Act does not say that all the licensed houses in Wales shall be on the
 same footing as if they had been declared to be six-day licensees, pur-
 suant to the Licensing Act, 1872, section 49, for if so, then the licensee
 would be prohibited by the Act, 1874, section 10, from selling any
 intoxicating liquor on Sunday to any person whatsoever not lodging in
 his house. And yet a six-day licensed house is the only house mentioned
 in the Licensing Acts which is closed under those Acts. The six-day

Appndx.

3. *Commencement of Act.*] This Act shall commence and come into operation with respect to each division or place in Wales on the day next appointed for the holding of the general annual licensing meeting for that division or place.(a)

4. *Sale of intoxicating liquors at railway stations.*] Nothing in this Act contained shall preclude the sale at any time at a railway station of intoxicating liquors to persons arriving at or departing from such station by railway.(b)

5. *Short title.*] This Act may be cited as the Sunday Closing (Wales) Act, 1881.

licensees are exempted as well as prohibited from selling to *bonâ fide* travellers. And it cannot be supposed that the Legislature intended to prohibit all the inns and hotels of Wales from supplying *bonâ fide* travellers. The result, therefore, is, that the Welsh licensed houses are not identical with the six-day licensed houses in the rest of England, but form a distinct class by themselves. Nothing is said as to whether the Welsh licensees are entitled to the same deduction from the Inland Revenue of one-seventh of the ordinary license duty, as the six-day licensees in England are entitled. And yet there is, on the other hand, no prohibition against Welsh licensees asking the justices for a six-day license, so as to put themselves on the same footing as the English six-day licensees are placed.

Christmas Day and Good Friday in Wales.] This statute says nothing directly or indirectly as to whether it alters the previous law in any way as regards Christmas Day and Good Friday. And the court has decided that the Act makes no alteration except as regards Sunday: *Forsdike v. Colquhoun*, 11 Q. B. D. 71; 49 L. T. 136; 47 J. P. 392.

The bearing on the point whether the holder of the license had a six-day license under 35 & 36 Vict. c. 94, s. 49, and whether it made any difference, did not require to be considered by the court in that case. If there is a six-day license, then the Act, 1874, section 3, makes the holder liable to close the house on Christmas Day and Good Friday as he does on Sunday. See notes to that section, *ante*, p. 88.

In Wales the licensees have the same option as in England to ask the justices for a six-day license, and if they obtain it they will be entitled to a deduction of one-seventh of the duty, and be prohibited as well as protected from supplying any *bonâ fide* travellers. If, on the other hand, those who keep inns do not ask for six-day licenses, but take the license such as the statute now gives it, they will be entitled to supply *bonâ fide* travellers, and indeed will be indictable if they do not.

(a) This somewhat obscure section was held to mean that the Act was not to come into operation till the general licensing day in 1882: *Richards v. McBride*, 8 Q. B. D. 119; 46 J. P. 247.

(b) This section saves the previous practice as to railway stations: see Act, 1874, section 10, *ante*, p. 159, and notes.

**BEER DEALERS RETAIL LICENSES (AMEND- Appndx.
MENT) ACT, 1882.**

45 & 46 VICT. CAP. 34.

*N ACT to amend "The Beer Dealers Retail Licenses
Act, 1880."* [10th August, 1882.]

WHEREAS by the Beer Dealers Retail Licenses Act, 1880, it is provided that the licensing justices shall be at liberty to exercise their discretion respecting the grant of certificates for such additional licenses for sale of beer by retail off the premises as are herein referred to, and that certificates for such additional licenses shall be granted at general annual licensing meetings, and not at any other time:

And whereas it is expedient to extend the provisions of the said Act to the granting of certificates for all licenses for sale of beer by retail for consumption off the premises:

Be it therefore enacted, &c., as follows:—

1. Extension of discretion as to licenses for consumption of beer off the premises.] Notwithstanding anything in section 4 of the Wine and Beerhouse Act, 1869, or in any other Act now in force, the licensing justices shall be at liberty, in their free and unqualified discretion, either to refuse a certificate for any license for sale of beer by retail to be consumed off the premises on any grounds appearing to them sufficient, or to grant the same to such persons as they in the execution of their statutory powers shall in the exercise of their discretion deem fit and proper.(c)

(c) This section is almost identical in its expressions with the provisions of the statute 43 Vict. c. 6, *ante*, p. 298, except that it applies to "any license for the sale of beer to be consumed off the premises." These provisions necessarily included the ordinary beer licenses granted under the Will 4, c. 64, and the amending Acts, *ante*, p. 217, and also included the table-beer licenses granted under 24 & 25 Vict. c. 21, s. 3, *ante*, p. 355. And it produced precisely the same effect on these two last-mentioned licenses by assimilating the jurisdiction of justices, and conferring on them absolute discretion as regards all beer licenses, whether in-door or out-door, so as to put these on the same footing as public-house licenses. It gave precisely the same jurisdiction, neither more nor less, not only as to new grants, but also as to renewals: *Kay*

Appndx. 2. *Certificates at annual licensing meetings only.*
 — Certificates for any such licenses as aforesaid shall, notwithstanding anything in any Act now in force, be granted at general annual licensing meetings, and not at any other time.(a)

3. *Short title; extent; and construction of Act.* This Act may be cited as the Beer Dealers Retail Licenses (Amendment) Act, 1882; and shall not extend to Scotland; and words therein have the same meaning as in the Licensing Act, 1872

46 & 47 VICT. CAP. 31.

AN ACT to prohibit the Payment of Wages to Workmen in Public Houses and certain other places.

[20th August, 1883.]

WHEREAS by the Coal Mines Regulation Act, 1872, 35 & 36 Vict. c. 76, and the Metalliferous Mines Regulation Act, 1872, 35 & 36 Vict. c. 77, the payment in public-houses, beershops, or other places in the said Acts mentioned of wages to persons employed in or about any mines, to which the said Acts apply is prohibited, and it is expedient to extend such prohibition to the payment in public-houses, beershops, and other places in England and Scotland of wages to all workmen as defined by this Act:

Be it therefore enacted, &c., as follows:—

v. *Over-Darwen*, 10 Q. B. D. 213; 52 L. J. M. C. 94; 31 W. R. 273; 47 L. T. 411; 47 J. P. 388. The exemption, however, from the new rule remains of in-door beer licenses which existed since 1869, and which cannot be refused to be renewed except on one of the four grounds: *R. v. King or Manchester JJ.*, 20 Q. B. D. 430; 52 J. P. 164; 57 L. J. M. C. 20; 58 L. T. 607; 36 W. R. 600.

It is true that there are inserted in this section the additional words not found in 43 Vict. c. 6, namely, "in their free and unqualified discretion," but these are mere surplusage. They do not imply, for example, that the appeal to quarter sessions has been taken away in respect of refusals to renew beerhouse licenses. If this had been so, the statute would have put the justices' discretion as to beer licenses on a far higher footing than it had always existed as to public-house licenses. Hence, as to these beer licenses, it has been decided that the appeal to quarter sessions against refusals to renew beerhouse licenses remains as before under the present Act: *R. v. Schneider*, 11 Q. B. D. 66; 52 L. J. M. C. 51; 47 J. P. 596; 48 L. T. 482.

(a) This section was superfluous, for no Act then in force authorized certificates for any such license to be granted at any other time than at the General Annual Licensing Meetings.

short title.] This Act may be cited as the Payment of Appndx.
Public Houses Prohibition Act, 1883.(b)

definition of workman.] In this Act the expression "workman" means any person who is a labourer, servant in any public-house, journeyman, artificer, handicraftsman, or is otherwise employed in manual labour, whether under the age of twenty-one or above that age, but does not include a domestic or menial nor any person employed in or about any mine to which the Mines Regulation Act, 1872, or the Metalliferous Mines Regulation Act, 1872, applies.(c)

no wages to be paid within public-house.] From and after the passing of this Act no wages shall be paid to any workman within any public-house, beershop, or place for the sale of any spirits, wine, cider, or other spirituous or fermented liquors, or any office, garden, or place belonging thereto or occupied thereby, save and except such wages as are paid by the resident occupier of such public-house, beershop, or place to any person *bona fide* employed by him.

Any person who contravenes or fails to comply with or permits any person to contravene or fail to comply with this Act shall be guilty of an offence against this Act.

The Coal Mines Regulation Act, 1887, 50 & 51 Vict. c. 58, s. 11, provides as follows: (1) No wages shall be paid to any person employed at any mine at or within any public-house, beershop, or place for the sale of any spirits, beer, wine, cider, or other spirituous or fermented liquors, or other house of entertainment, or any office, garden, or place belonging or contiguous thereto or occupied therewith: any person who contravenes or fails to comply with, or permits any person to contravene or fail to comply with this section, shall be guilty of an offence against this Act; and in the event of any such contravention or non-compliance by any person whomsoever the owner, manager, or agent of the mine shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means for preventing the same, and to the best of his power enforcing the provisions of this Act. The penalty is stated *ibid.*, section 59.

The Metalliferous Mines Act, 1872, 35 & 36 Vict. c. 77, s. 9, contains a provision nearly in the same words. The penalty is stated in section 31.

The definition of workman here given is nearly identical with that given in the Employers and Workmen Act, 1875, 38 & 39 Vict. c. 10, but not quite so extensive. The decisions, however, under the latter Act will usually apply to this Act.

Appndx. And in the event of any wages being paid by any person in contravention of the provisions of this Act for or on behalf of any employer, such employer shall himself be guilty of an offence against this Act, unless he prove that he had taken all reasonable means in his power for enforcing the provisions of this Act and to prevent such contravention.(a)

4. Penalties.] Every person who is guilty of an offence against this Act shall be liable to a penalty not exceeding ten pounds for each offence; and all offences against this Act may be prosecuted and all penalties under this Act may be recovered by any person summarily in England in the manner provided by the Summary Jurisdiction Acts, and in Scotland in the manner provided by the Summary Jurisdiction (Scotland) Acts, 1864 and 1881.

5. Act not to apply to Ireland.] This Act shall not apply to Ireland.

(a) The description of public-houses, &c., here is not quite so extensive as in the above quoted sections of the Mines Regulation Acts, which contain the words "or other house of entertainment." The places for the sale of spirits, beer, wine, cider, &c., include houses which are licensed for consumption off the premises. The person who will be liable under this section will be the paymaster, whoever he be, and the employer will escape liability if he can show that he took reasonable means to prevent the contravention of the Act, and such means seem to be an express direction to his clerks, managers, &c., not to pay the workmen in such houses.

No parliamentary polls at inns.] No poll at any election for members of parliament in England and Wales shall be taken at any inn, hotel, tavern, public-house, or other premises licensed for the sale of beer, wine, or spirits, or in any booth, hall, room, or other place directly communicating therewith, unless by consent of all the candidates expressed in writing: 16 & 17 Vict. c. 68, s. 6.

No borough justices' room to be at inn.] (1) The council of a borough having a separate commission of the peace shall provide and furnish a suitable justices' room, with offices, for the business of the borough justices. (2) No room in a house licensed for the sale of intoxicating liquors may be used for this purpose: 45 & 46 Vict. c. 50, s. 160.

At parliamentary elections no inns for committee rooms.] (a) Any premises on which the sale by wholesale or retail of any intoxicating liquor, is authorised by a license (whether the license be for consumption on or off the premises); or (b) any premises where any intoxicating liquor is sold or is supplied to members of a club, society, or association, other than a permanent political club; or (c) any premises whereon

*Polls and Meetings, &c., in Public-houses.***Appndx.**

ment of any kind, whether food or drink, is ordinarily sold for option on the premises ; or (d) the premises of any public element, in receipt of an annual parliamentary grant, or any part of such premises shall not be used as a committee room for the purpose of wishing or procuring the election of a candidate at an election ; any person hires or uses any such premises, or any part thereof, as a committee room, he shall be guilty of illegal hiring, and the letting such premises, or part, if he knew it was intended to use the same as a committee room, shall also be guilty of illegal hiring. And that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices, or for the holding of public meetings, or of arbitrations, if such part has a separate entrance, and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid : 46 & 47 Vict. c. 51, s. 20.

municipal elections no committee rooms in inns, &c.] (1) (a) Any premises which are licensed for the sale of any intoxicating liquor, for option on or off the premises, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises ; or (b) any premises where any intoxicating liquor is supplied to members of a club, society, or association, or any part of any such premises, shall not for the purpose of promoting or procuring the election of a candidate at a municipal election, be used either as a committee room for holding a meeting, and if any person hires or uses any such premises, or any part thereof, in contravention of this section, he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises, or part thereof, if he knew it was intended to use the same in contravention of this section, shall also be guilty of illegal hiring.

(2) Provided that nothing in this section shall apply to any premises which are ordinarily let for the purpose of chambers or offices, or the holding of public meetings, or of arbitrations, if such part has a separate entrance, and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid : 47 & 48 Vict. c. 70, s. 16.

bribery or treating on licensed premises.] With respect to a person holding a license or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect—

If it appear to the court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the court shall direct such conviction to be entered in the proper register of licenses.

If it appears to an election court or election commissioners that a licensed person has knowingly suffered any bribery or treating in connection with any election, to take place upon his licensed premises, such court or commissioners (subject to the provisions of this Act as to a person having an opportunity of being heard by himself, and producing

pndx.

Polls and Meetings, &c., in Public-houses.

evidence before being reported), shall report the same; and whether such person obtained a certificate of indemnity or not, it shall be the duty of the director of public prosecutions to bring such report before the licensing justices from whom, or on whose certificate the licensed person obtained his license, and such licensing justices shall cause such report to be entered in the proper register of licenses.

(c.) Where an entry is made in the register of licenses of any such conviction or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his license or certificate, and may be a ground, if the justices think fit, for refusing such renewal. And where the evidence shows any corrupt practice committed by a licensed person, the election commissioners are to report the case to the director of public prosecutions: 46 & 47 Vict. c. 51, s. 38. This section was extended to bribery and treating at Municipal elections: 47 & 48 Vict. c. 70, s. 23. The section was also extended to bribery and treating at elections for all members of local boards, under the Public Health Act, members of improvement commissioners, of guardians, and members of school boards, except that as to these last elections, candidates' committees may be held in public-houses in districts not being urban sanitary districts, or not being in the metropolis: 47 & 48 Vict. c. 70, s. 36.

If debtor arrested not to be taken to public-house.] Where any officer whatsoever arrests or has in custody any person by virtue of any action, writ, or attachment for debt, such officer shall not (a) convey such person without his free consent to any house licensed for the sale of intoxicating liquors, &c., nor (b) charge such person with any sum for, or procure him to call or pay for any liquor, food, or thing whatsoever except what he freely asks for: 50 & 51 Vict. c. 55, s. 14.

Giving drink as part of wages.] The *Truck Amendment Act*, 1887, 50 & 51 Vict. c. 46, s. 4, provides that no contract with a servant in husbandry, to give intoxicating drink in addition to money wages shall be legal.

Disinfecting rooms in licensed houses.] Any person who knowingly lets for hire any house, room, or part of a house in which any person has been suffering from any dangerous infectious disorder, without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner, as testified by a certificate signed by him, shall be liable to a penalty not exceeding 20*l*. For the purpose of this section the keeper of an inn shall be deemed to let for hire part of a house to any person admitted as a guest into such inn: 38 & 39 Vict. c. 55, s. 128.

LICENSING EVIDENCE ACT (1884).

Appndx.

47 & 48 VICT. CAP. 29.

ACT to extend Section forty-one of "The Licensing Act, 1872. [28th July, 1884.]

AS by the 41st section of the Licensing Act, 1872, it is provided that magistrates or justices in petty sessions may, if the application is for the grant of a license, receive a copy of the license if the same has been wilfully withheld by the holder, and it is expedient to extend the said section :

is enacted, &c., as follows :

Extension of 35 & 36 Vict. c. 94, s. 41.] Section 41 of the Licensing Act, 1872, shall be construed as if after the words "application is for the grant of a license" there were inserted the words "or for the transfer of a license."

Provided that the magistrates or justices shall be satisfied by the evidence submitted to them that the license is withheld without legal right to withhold the same.(a).

Short title.] This Act may be cited as the Licensing Evidence Act, 1884.

INTOXICATING LIQUORS (SALE TO CHILDREN)
ACT, 1886.

49 & 50 VICT. CAP. 56.

ACT for the Protection of Children against the Sale to them of Intoxicating Liquors.

[25th June, 1886.]

AS it is expedient to protect young children against the ill consequences resulting from their being permitted to use intoxicating liquors for their own consumption :

is therefore enacted, &c., as follows :

The words here directed to be inserted will be found within brackets in 35 & 36 Vict. c. 94, s. 41, *ante*, p. 74. See notes to that section.

Appndx.

1. *Sale of liquors to children to be illegal.*] Every person who knowingly sells, or allows any person to sell, any liquor of any description of intoxicating liquors to any person under thirteen years for consumption on the premises by or for such person, or under such age as aforesaid, shall be liable to a penalty of twenty shillings for the first offence, and no more than forty shillings for the second and any subsequent offence.

2. *Legal proceedings.*] For the purposes of all legal proceedings required to be taken under the foregoing sections, this Act shall be construed as one Act with the Licensing Act, 1874.

3. *Extent of Act.*] This Act shall not extend to

4. *Short title.*] This Act may be cited for all purposes as the Intoxicating Liquors (Sale to Children) Act, 1886.

5. *Commencement of Act.*] This Act shall come into force on 31st July, 1886.

(a) See this section in notes to Act, 1872, section 7, and

FORMS.

Appndx.
FORMS.

FORM OF REFRESHMENT HOUSE LICENSE.

(23 & 24 Vict. cc. 27, 107, and Acts amending the same.)

I, the undersigned, duly authorised by the Commissioners of Inland Revenue, hereby grant license to _____ now being a householder, and dwelling in a house in _____ in the parish of _____ in the _____ of _____ to keep open the said house as a refreshment house, and to sell any victual or refreshment to be consumed therein, and in the premises thereunto belonging (provided that for the sale of any excisable or intoxicating liquor he shall have in force a proper license granted to him in that behalf), and for this license he hath paid a sum of _____ the said house and premises being _____ a value of thirty pounds a year; and this license is granted upon condition that the said _____ do not wilfully or knowingly permit any drunkenness, or any violent or quarrelsome, or other disorderly conduct, in this house or premises, nor knowingly suffer any unlawful games or any gaming whatsoever therein, nor knowingly suffer or permit persons of known bad character to assemble and meet together therein, but do maintain good order and rule therein: And this license shall continue in force from the day of the date hereof until the first day of April next ensuing; and this license shall cease and determine, and shall become void, in case any of the conditions or regulations contained therein shall be transgressed or shall not be observed.

Dated this _____ day of _____ 18—.

(L.S.)

Collector of Inland Revenue.

Appndx.**FORM OF PUBLICAN'S EXCISE LICENSE.****FORMS.**

(6 Geo. 4, c. 81; 43 & 44 Vict. c. 20.)

I, the undersigned, duly authorised by the Commissioners of Inland Revenue, hereby grant license to _____ residing in a house situated at _____ in the parish of _____ in the _____ of _____ and known by the sign of _____ to exercise and carry on the trade or business of a retailer of spirits in the said house, and to sell by retail therein spirits, wine, sweets, made wines, mead, metheglin, beer, cider and perry, to be consumed either on or off the premises, from the _____ of the date hereof until and including the tenth day of October next ensuing, such house and premises being rented or valued at the rent or annual sum of £ _____, and I also hereby grant license to him to deal in and sell tobacco and snuff during the term above mentioned, he having paid for this license, being _____ license, the under-mentioned duties, amounting together to the sum of £ _____.

Dated this _____ day of _____ 18—.

	£	s.	d.
Retailer of spirits		"	"
Dealer in tobacco		"	"
Total		"	"

(L.S.)

Collector of Inland Revenue.

NOTE.—This license, so far as it relates to the sale of intoxicating liquors, becomes void if the magisterial license granted to the licensee is forfeited in pursuance of "The Licensing Act, 1872," or becomes void under any of the provisions of that Act (see 35 & 36 Vict. c. 94, s. 63).

FORM OF JUSTICES' CONSENT FOR AN OCCASIONAL LICENSE.

(25 Vict. c. 22, s. 13; 26 & 27 Vict. c. 33, s. 20; 27 Vict. c. 18, s. 5; 37 & 38 Vict. c. 49, ss. 18—20; 37 & 38 Vict. c. 69, ss. 4—6.)

I, the undersigned, a justice of the peace, usually acting at the petty sessions for the petty sessional division within which the place of sale hereinafter mentioned is situated, hereby consent to the grant of an occasional license to _____ of (a) _____ in the county of _____ authorising him to sell (b) _____ on the (c) _____ day of _____ 188—, between the hours of _____ o'clock in the forenoon and _____ o'clock in the afternoon (*being not earlier than sunrise nor later than ten o'clock at night, unless the occasion be a public dinner or ball* (d)) in a (e) _____ situate at _____ in the parish of _____

— on the occasion of () — he being a person duly **Appndx.**
used to sell the same at the premises first above mentioned.
dated at — this — day of — 188—. **FORMS.**

J. P.

his consent signed by a justice is to be produced, with the proper
, to the collector or supervisor of Inland Revenue, who thereupon
grant the occasional license.

the duty payable is as follows:—For a licensed victualler, 2s. 6d. a
for a beer retailer and for a wine retailer, 1s. a day; for a tobacco
snuff dealer, 4d. a day. No duty is chargeable for the sale of
staments only.

-) Insert the premises for which the applicant is licensed.
-) Insert the articles for sale of which the license is required.
-) Insert the day or days for which the license is to be granted.
-) An extension of the hours of sale is only allowed on the occasion
of public dinner or ball.
-) Insert in the place of sale, as, "a tent," "a booth," "a stall,"
room," or according to the fact.
-) Insert "an agricultural show," "public races," "a fair," "a
stet match," or according to the fact.

FORM OF OCCASIONAL LICENSE.

Vict. c. 22, s. 13; 26 & 27 Vict. c. 33, ss. 19, 20; 27 Vict. c. 18,
s. 5; 37 & 38 Vict. c. 49, ss. 18—20; 37 & 38 Vict. c. 69,
ss. 4—6.

the undersigned, duly authorised by the Commissioners of Inland
Revenue, hereby grant license to — of, &c., in the county of —
l — on the — day of — 188—, between the
of — o'clock in the forenoon and — o'clock in the
noon (*being not earlier than sunrise nor later than ten o'clock at*
night, unless the occasion be a public dinner or ball), in a —
eat — on the occasion of — he being a person duly
used to sell the same at the premises first above mentioned, and
ing produced to me the consent of a justice of the peace for the
of this license, as required by the enactments in that behalf.
dated this — day of — 188—.

s. d.

Duty paid £ „ „

Collector.

(L.S.)

Supervisor.

is license does not protect the person to whom it is granted, unless
time of sale he produces it when requested so to do by any officer
land Revenue, or by any constable or police officer.

Appndx.
FORMS.

FORMS OF LICENSES AND CERTIFICATES

Issued by the Secretary of State.

**I. FORM OF GRANT OF A NEW LICENSE, AND CONFIRMATION
SUCH GRANT.**

Licensing Act, 1872.

At the general annual licensing meeting [*or an adjournment of
general annual licensing meeting*] holden at ———, on
——— day of ———, 188—, for the division of ———
the county of ——— [*or for the borough of :*]

(a.) We, being ——— of the justices acting for the said divi
and being the majority of those at the said meeting assembled,

or,

(b.) We, being the majority of the members present of the bor
licensing committee, appointed for the said borough in pursuan
the Licensing Act, 1872,

or,

(c.) We, being ——— of the justices of the said borough,
being the majority of those at the said meeting assembled,

Hereby grant unto *A. B.*, of ——— [*here insert a lic
victualler, beerhouse keeper. coffeehouse keeper, confectioner, ca
house keeper, licensed dealer in spirits, a refreshment house keep
wholesale spirit dealer, the holder of a strong beer license, or a
case may be*], this license authorising him to apply for and hold —
[*Here insert, A., or B., or C. . . . or M., as in the Appen
p. 323, as the case may be.*]

The owner of the premises in respect of which this license is gr
is *M. N.*, of ———.

This license shall be in force from the ——— day of —
until the ——— day of ———.

Witness our hands.

[*Signature of Justices*]

* NOTE.—A license may be authenticated by an official seal in
of signatures (35 & 36 Vict. c. 94, s. 40, sub-sect. 3), applying 33
Vict. c. 29, s. 4, sub-sect. 2. *In that case insert, instead of "wi
our hands"—"given under the official seal of the said justice
sessions assembled, which seal is hereto affixed in their presence by
C.D., Clerk of the licensing justices," or as the case may be.*

Confirmation.

Appendx.

FORMS.

being holden at _____, on the _____ day of _____
being the majority of members present at the county
committee, appointed for the said county in pursuance of
the Act, 1872, do hereby confirm the grant of the above

on our hands.*

or,

being _____ of the justices of the said borough, and
the majority of those at the said meeting assembled. do hereby
confirm the grant of the above license.

on our hands.*

or,

being the majority of the members present of the joint
committee appointed for the said borough in _____ in pursuance
of the Act, 1872, do hereby confirm the grant of the above

on our hands.

[*Signatures of Justices.*]*

FORM OF RENEWAL OF A LICENSE, 35 & 36 VICT. C. 94, S. 74.

Licensing Act, 1872.

at the _____ annual licensing meeting [*or an adjournment of the*
annual licensing meeting] holden at _____ on the
_____ day of _____, for the division of _____, in the
county of _____ [*or, for the borough of _____*]:

being _____ of the justices acting for the said division,
the majority of those at the said meeting assembled,

or,

being _____ of the justices of the said borough, and
the majority of those at the said meeting assembled,
do hereby grant unto A. B. of _____ [*here insert, a licensed*
beerhouse keeper, coffee house keeper, confectioner, eating-
house keeper, licensed dealer in spirits, a refreshment house keeper, a
spirit dealer, the holder of a strong beer license, *or, as the case*
is renewal license authorising him to apply for and hold
[Here insert A., or B., or C. . . . or M. as in the
s. 323, as the case may be.]

of the premises in respect of which this license is granted

shall be in force from the _____ day of _____,
_____ day of _____.

on our hands.

[*Signature of Justices.*]*

Appndx.
FORMS.

**III. THE SAME BY WAY OF INDORSEMENT, 35 & 36 VICT.
 C. 94, s. 48 (2).**

(To be indorsed on the License, or on a copy thereof.)

At the general annual licensing meeting [*or*, an adjournment of the general annual licensing meeting] holden at _____, on the _____ day of _____, for the division of _____, in the county of _____ [*or*, for the borough of _____]:

(a.) We, being _____ of the justices acting for the said division and being the majority of those at the said meeting assembled,

or,

(b.) We, being _____ of the justices of the said borough, and being the majority of those at the said meeting assembled,

Hereby renew the license within contained, and such license renewed shall be in force until the _____ day of _____.

The owner of the premises in respect to which the license is granted is *M.N.*, of _____.

Witness our hands.

[Signatures of Justices.]^a

**IV. FORM OF TRANSFER LICENSE GRANTED AT SPECIAL SESSION
 IN PURSUANCE OF 9 Geo. 4, c. 61, s. 4.**

At a special session holden at _____, on the _____ day _____ for the division of _____, in the county of _____ [*or*, for the borough of _____]:

(a.) We, being _____ of Her Majesty's justices of the peace acting in and for the said division, and being the majority of those at the said sessions assembled,

or,

(b.) We, being _____ of the justices of the said borough, and being the majority of those at the said meeting assembled,

Hereby, pursuant to section 4 of the Intoxicating Liquor License Act, 1828, and the Acts amending the same, license one *C.D.* _____, and transfer to him* the license now held by *A.B.* _____ [*here insert a licensed victualler, beerhouse keeper, coach house keeper, confectioner, eating-house keeper, licensed dealer in spirits, a refreshment house keeper, a wholesale spirit dealer, the holder of a strong beer license, or as the case may be*], and granted on _____ day of _____ last, authorising him to hold _____ [*Here insert A. or B. or C. . . . or M., as in the Appendix p. 323, as the case may be.*]

*[*If by indorsement, say from the asterisk,* the license within contained now held by the within-named *A.B.*

And we hereby authorise the said *C.D.* to apply for and hold [*in cases of alehouses insert, any of the said excise licenses, as now held well as those which were not held by the said A.B. :—in other cases insert, the said excise license so held by the said A.B.*]

This transfer to be in force from this day until the _____.

Witness our hands.

[Signatures of Justices.]

V. FORM OF GRANT OF LICENSE AT SPECIAL SESSIONS, IN PURSUANCE OF 9 GEO. 4, C. 61, S. 14.

**Appendix
FORMS.**

At a special sessions holden at _____ on the _____ day of _____ for the division of _____ in the county of _____ [or for the borough of _____]:

(a.) We, being _____ of the justices acting for the said division, and being the majority of those at the said sessions assembled,

or,

(b.) We, being _____ of the justices of the said borough, and being the majority of those at the said sessions assembled,

Hereby, pursuant to section 14 of the Intoxicating Liquor Licensing Act, 1828, and the Acts amending the same, grant unto A.B. of _____ [here insert a licensed victualler, beerhouse keeper, coffee-house keeper, confectioner, eating-house keeper, licensed dealer in spirits, refreshment house keeper, a wholesale spirit dealer, the holder of a strong beer license, or as the case may be], this license authorising him to apply for and hold

[Here insert A., or B., or C. . . . or M., as in the Appendix now, as the case may be.]

The owner of the premises in respect of which this license is granted M. N., of _____.

This license shall be in force from the _____ day of _____ to _____ day of _____.

Witness our hands.

[Signatures of Justices.]*

FORMS OF DESCRIPTIONS OF THE SEVERAL LICENSES (FOR INSERTION IN THE PREVIOUS SKELETON FORMS).

A.

Alehouse license (on or off).] Any of the excise licenses that may be held by a publican for the sale by retail, at a house situated at _____, known by the sign of the _____, of intoxicating liquor, to be consumed either on or off the premises.

If the license be a six-day license add as a separate paragraph :

The premises in respect of which this license is granted shall be closed during the whole of Sunday.

B.

Beerhouse license (off).] An excise license to sell by retail at a house situated at _____ beer to be consumed off the premises, in pursuance of the Act 11 Geo. 4 & 1 Will. 4, c. 64, and Acts amending the same.

Appndx.

FORMS.

C.

Beerhouse license (on or off).] An excise license to sell by retail at a house situate at _____ beer to be consumed either on or off the premises, in pursuance of the Act 11 Geo. 4 & 1 Will. 4, c. 64, and Acts amending the same.

If the license be a six-day license add as a separate paragraph:

The premises in respect of which this license is granted shall be closed during the whole of Sunday.

D.

Cider and perry license (on or off).] An excise license to sell by retail at a house situated at _____ cider and perry, to be consumed either on or off the premises, in pursuance of the Act 11 Geo. 4 & 1 Will. 4, c. 64, and Acts amending the same.

If the license is a six-day license add as a separate paragraph:

The premises in respect of which this license is granted shall be closed during the whole of Sunday.

E.

Additional license to strong beer dealers.] An additional excise license to sell by retail at a house situated at _____ beer to be consumed on the premises, in pursuance of the Act 26 & 27 Vict. c. 33, s. 1.

F.

Table-beer license (off).] An excise license to sell by retail at a house situated at _____ table-beer, to be consumed off the premises, in pursuance of the Act 24 & 25 Vict. c. 21, s. 3.

G.

Wine license to shopkeeper (off).] An excise license to sell by retail at a shop situated at _____, wine to be consumed off the premises, in pursuance of the Act 23 Vict. c. 27, s. 3, and Acts amending the same.

H.

License for wine to a refreshment house keeper, confectioner, or eating-house keeper (on or off).] An excise license to sell by retail at a house situated at _____ wine to be consumed either on or off the premises, in pursuance of the Act 23 Vict. c. 27, ss. 7 and 8, and Acts amending the same.

If the license is a six-day license add as a separate paragraph:

The premises in respect of which this license is granted shall be closed the whole of Sunday.

I.

Appndx.

FORMS.

licensed dealer's additional spirit license (off).] An additional license to sell by retail at a shop situated at _____ spirits, to be consumed off the premises, in pursuance of the Act 24 & 25 Vict. c. 2.

K.

license for liqueurs in shops (off).] An excise license to sell by retail at a shop situated at _____ liqueurs, to be consumed off the premises, in pursuance of the Acts 11 & 12 Vict. c. 121, and 23 & 24 Vict. c. 114, and Acts amending the same.

L.

license for sweets to a refreshment house keeper, confectioner, or pig-house keeper (on or off).] An excise license to sell by retail at a house situated at _____ sweets, to be consumed either on or off the premises in pursuance of the Act 6 Geo. 4, c. 81, and Acts amending the same.

the license is a six-day license add as a separate paragraph :
the premises in respect of which this license is granted shall be closed the whole of Sunday.

M.

sweets license to shopkeeper (off).] An excise license to sell by retail at a shop situated at _____ sweets to be consumed off the premises, in pursuance of the Act 6 Geo. 4, c. 81, and Acts amending the same.

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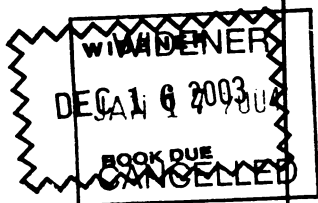
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Illicit Sales—continued.

3. Conviction.
4. Warrant of distress.
5. Commitment for want of distress (or for reduced term on part payment).
6. Information against seller, not licensed to sell to be drunk on premises, privy or consenting to drinking on the premises, *or*, taking, &c., liquor from the premises for sale and consumption elsewhere, ss. 5 and 6.
7. Summons.
8. Conviction.
9. Warrant of distress.
10. Commitment for want of distress (or for reduced term on part payment).

Drunkenness and other offences against public order.

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32. Summons.
33. Conviction.
- 33a. Ditto on parchment.
34. Warrant of distress.
35. Commitment where no goods whereon to levy distress, or in default of distress.
36. Information against person who, in highway, &c., is guilty, while drunk, of riotous misbehaviour; *or*, who is drunk while in charge, on a highway, &c., of any carriage, &c.
37. Summons.
38. Conviction.
- 38a. Ditto, on parchment.
39. Warrant of distress.
40. Commitment in default of distress.
- 40a. Conviction. Imprisonment. Costs.
- 40aa. Ditto, on parchment.
- 40b. Ditto, commitment where imprisonment is adjudged.

Drunkenness, &c.—continued.

41. Information for permitting drunkenness, &c., on premises, *or* selling to drunken person, *or* for allowing prostitutes to remain longer on premises than necessary for refreshment, *or* suffering gaming to be carried on on premises, *or* opening house in contravention of 16 & 17 Vict. c. 119.—Sections 13, 14, and 17.
42. Summons.
43. Conviction.
- 43a. Ditto, on parchment.
44. Warrant of distress upon a conviction.
45. Commitment for want of distress (reduced term on part payment), on conviction.
56. Information against drunkards, &c., refusing to quit premises, s. 18.
57. Summons.
58. Conviction.
59. Warrant of distress on conviction.
60. Warrant of commitment when there are no goods whercon to levy distress, on default of distress.

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68. Summons.
69. Conviction for opening premises, &c., in prohibited hours.
70. Warrant of distress.
75. Information against person, not being an inmate, &c., found on premises during closing hours.
76. Summons.
77. Conviction.

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86. Search warrant.

